

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1971

JULY 17, 1971.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. GARMATZ, from the Committee on Merchant Marine and Fisheries,
submitted the following

REPORT

[To accompany H.R. 9727]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 9727) to regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Marine Protection, Research, and Sanctuaries Act of 1971".

FINDING, POLICY, AND PURPOSE

SEC. 2. (a) Unregulated dumping of material into the oceans, coastal, and other waters endangers human health, welfare and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of material into the oceans, coastal, and other waters and to prevent or strictly limit the dumping into the oceans, coastal, and other waters of any material which could adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. To this end, it is the purpose of this Act to regulate the transportation of material for dumping into the oceans, coastal, and other waters, and the dumping of material by any person from any source if the dumping occurs in waters over which the United States has jurisdiction.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Oceans, coastal, and other waters" means oceans, gulfs, bays, salt water lagoons, salt water harbors, other coastal waters where the tide ebbs and flows, the Great Lakes and their connecting waters, and the Saint Lawrence River.

(c) "Material" means matter of any kind or description, including, but not limited to, dredge spoil, solid waste, garbage, sewage, sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and industrial waste; but such term does not mean oil within the meaning of section 11 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1161), and does not mean sewage from vessels within the meaning of section 13 of such Act (33 U.S.C. 1163).

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(f) "Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure where such disposition is regulated under the provision of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), or under the provisions of section 13 of the Rivers and Harbors Act of 1890, as amended (33 U.S.C. 407), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in the oceans, coastal, and other waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: *And provided further*, That it does not include the deposit of oyster shells or other material when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged or fill material" means any material excavated or dredged from the navigable waters of the United States or any material deposited into such waters for the purpose of bulkheading, or building up or extending land areas.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

TITLE I—OCEAN DUMPING

PROHIBITED ACTS

SEC. 101. (a) No person shall transport any radiological, chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material from the United States for the purpose of dumping it into the oceans, coastal, and other waters.

(b) No person shall dump any radiological, chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material in (1) that part of the oceans, coastal and other waters which is within the territorial jurisdiction of the United States, or (2) a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

(c) No officer, employee, agent, department, agency, or instrumentality of the United States shall transport any radiological, chemical, or biological warfare agent or high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material from any location outside the

territory of the United States for the purpose of dumping it into the oceans, coastal, and other waters.

ENVIRONMENTAL PROTECTION AGENCY PERMITS

SEC. 102. (a) Except in relation to dredged or fill material, as provided for in section 103 of this title, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, as provided for in section 101 of this title, the Administrator may issue permits, after notice and opportunity for public hearing, for the transportation of material for dumping into the oceans, coastal, and other waters, or for the dumping of material into the waters described in section 101(b), where the Administrator determines that such transportation, or dumping, or both, will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

- (A) The need for the proposed dumping.
- (B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.
- (C) The effect of such dumping on fisheries resources.
- (D) The effect of such dumping on marine ecosystems, particularly with respect to—
 - (i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical pathways,
 - (ii) potential changes in marine ecosystem diversity and stability, and
 - (iii) species and community population dynamics.
- (E) The persistence and permanence of the effects of the dumping.
- (F) The effect of dumping particular volumes and concentrations of such materials.
- (G) Appropriate locations and methods of disposal, including land-based alternatives.

In establishing or revising such criteria, the Administrator shall consult with the Secretaries of Commerce, Interior, State, Defense, Agriculture, Health, Education, and Welfare, and Transportation, the Atomic Energy Commission, and other appropriate Federal, State, and local officials. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards.

(b) The Administrator may establish and issue various categories of permits, including the general permits described in section 104(c).

(c) The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

CORPS OF ENGINEERS PERMITS

SEC. 103. (a) The Secretary may issue permits, after notice and opportunity for public hearing, for the transportation of dredged or fill material for dumping into the oceans, coastal, and other waters, or for the dumping of dredged or fill materials into the waters described in section 101(b), or both, where the Secretary determines that such transportation, or dumping, or both, will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) In making the determination required by subsection (a) of this section as to whether a permit may be issued, the Secretary shall apply the criteria established by the Administrator pursuant to section 102, together with an evaluation by the Secretary of the effect on navigation, economic and industrial development, and foreign and domestic commerce of the United States: *Provided*, That in applying the criteria established by the Administrator, the Secretary shall consult with the Administrator and shall give due consideration to the views and recommendations

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of the Administrator in that regard and also in regard to the designations of the Administrator of recommended sites or times for dumping: *Provided further*, That the Secretary may issue no permit for dumping which would violate the designation of the Administrator, found necessary to protect critical areas, of a site within which certain material may not be dumped: *And provided further*, That in regard to the designation of recommended sites or sites where certain material may not be dumped, the Secretary, after consultation with the Administrator, need not follow the designation of the Administrator where the Secretary certifies that there is no economically feasible alternative reasonably available.

(c) In connection with Federal projects involving dredged or fill material, the Secretary may, in lieu of the permit procedure, issue regulations which shall require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirement which are made applicable to the issuance of permits under subsections (a) and (b) of this section.

PERMIT CONDITIONS

SEC. 104. (a) Permits issued under this title shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

(b) The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.

(c) Notwithstanding any other provision of this title, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified material for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or may alter or revoke partially or entirely the terms of permits issued by him under this title, for the transportation for dumping, or the dumping, or both, of specified material, where he finds that such material cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for hearing on such action as proposed.

(e) The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(f) Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this title shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

(g) A copy of any permit issued under this title shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping, authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or his designee.

PENALTIES

SEC. 105. (a) Any person who violates any provision of this title, or of the regulations promulgated under this title, or a permit issued under this title shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such violation. In determining the amount of the penalty, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate

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such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined not more than \$50,000 or imprisoned for not more than one year, or both, one-half of said fine, but not to exceed \$2,500, to be paid to the person or persons giving information which shall lead to conviction.

(c) For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(d) The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this title, of regulations promulgated under this title, or of permits issued under this title, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1163), used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(f) If the provisions of any permit issued under section 102 or 103 are violated, the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(g)(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit, established or issued by or under this title. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the Secretary, and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator or the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section, or has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this title.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any

other relief (including relief against the Administrator, the Secretary, or a State agency).

(h) No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if necessary in an emergency, to safeguard life. Any such dumping shall be reported to the Administrator under such conditions as he may prescribe:

RELATIONSHIP TO OTHER LAWS

SEC. 106. (a) After the effective date of this title, all licenses, permits, and authorizations other than those issued pursuant to this title shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this title, and whether issued before or after the effective date of this title.

(b) The provisions of subsection (a) shall not apply to actions taken before the effective date of this title under the authority of the Rivers and Harbors Act of 1890 (30 Stat. 1151), as amended (33 U.S.C. 401 et seq.).

(c) Prior to issuing any permit under this title, if it appears to the Administrator that the disposition of the material, other than dredged or fill material, to be transported for dumping or to be dumped may affect navigation in the navigable waters of the United States or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(d) After the effective date of this title, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this title. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into the waters described in subsection 101(b) which might affect waters within the jurisdiction of such State and, if the Administrator determines, after notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this title, he may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate, or regional authority, Federal territory or Commonwealth, or the District of Columbia.

(e) Nothing in this title shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661-666c).

ENFORCEMENT

SEC. 107. (a) The Administrator or the Secretary, as the case may be, may whenever appropriate, utilize by agreement, the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this title.

(b) The Administrator or the Secretary may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping.

REGULATIONS

SEC. 108. In carrying out the responsibilities and authority conferred by this title, the Administrator and the Secretary are authorized to issue such regulations as they may deem appropriate.

INTERNATIONAL COOPERATION

SEC. 109. The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support

specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations in support of the policy of this Act.

REPEAL OF OTHER LAWS

SEC. 110. (a) The second proviso to the last paragraph of section 20 of the Act of March 3, 1899 (30 Stat. 1154), as amended (33 U.S.C. 418), is repealed.

(b) Sections 1, 2, 3, 4, 5, 6, and 7 of the Act of June 29, 1888 (25 Stat. 209), as amended (33 U.S.C. 441-451b), are repealed.

(c) Section 2 of the Act of August 5, 1886 (24 Stat. 329) (33 U.S.C. 407a), is repealed.

EFFECTIVE DATE AND SAVINGS PROVISION

SEC. 111. (a) This title shall take effect six months after the date of the enactment of this Act.

(b) No legal action begun, or right of action accrued, prior to the effective date of this title shall be affected by any provision of this title.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 112. There are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this title.

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

SEC. 201. (a) The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of monitoring and research regarding the effects of the dumping of material pursuant to title I of this Act, and shall from time to time report his findings (including an evaluation of the short-term ecological effects and economic factors involved) to the Congress.

(b) There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such fiscal year may not exceed \$1,000,000.

SEC. 202. (a) The Director, National Science Foundation, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. In carrying out such research, the National Science Foundation shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans may best be preserved for the benefits of succeeding generations of mankind.

(b) In carrying out its responsibilities under this section, the National Science Foundation, under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of its activities by such channels of communication as may appear appropriate.

(c) In January of each year, the National Science Foundation shall report to the Congress on the results of activities undertaken by it pursuant to this title during the previous year.

(d) Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the National Science Foundation in carrying out the purposes of this title and, to the extent permitted by law, to furnish such information as may be requested.

(e) The National Science Foundation, in carrying out its responsibilities under this title, shall, to the extent feasible, by contract or other agreement, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(F) There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such fiscal year may not exceed \$1,000,000.

TITLE III—MARINE SANCTUARIES

SEC. 301. Notwithstanding the provisions of subsection (h) of section 3 of this Act, the term "Secretary", when used in this title, means Secretary of Commerce.

SEC. 302. (a) The Secretary, after consultation with the Secretaries of State, Defense, Interior, and Transportation and the Administrator, may designate as marine sanctuaries those areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention on the Continental Shelf (15 U.S.T. 741; TIAS 5578), which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values.

(b) Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 2 of title I of the Act of May 22, 1953 (67 Stat. 29), the Secretary shall consult with, and give due consideration to the views of, the responsible officials of the State involved. As to such waters, a designation under this section shall become effective 60 days after it is published, unless the Governor of any State involved shall, before the expiration of the 60-day period, certify to the Secretary that the designation, or a specified portion thereof, is unacceptable to his State, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the Governor withdraws his certification of unacceptability.

(c) When a marine sanctuary is designated, pursuant to this section, which includes an area more than twelve miles from the baseline from which the breadth of the territorial sea is measured, the Secretary of State shall take action, as appropriate, to enter into agreements with other Governments, in order to protect such sanctuary and promote the purposes for which it was established.

(d) The Secretary shall make his initial designation under this section within two years following the date of enactment of this title. Thereafter, he shall periodically designate such additional areas as he deems appropriate. The Secretary shall submit a report annually to the Congress, setting forth a comprehensive review of his actions under the authority under this section, together with appropriate recommendations for legislation considered necessary for the designation and protection of marine sanctuaries.

(e) Before a marine sanctuary is designated under this section, the Secretary shall hold public hearings in the coastal area which would be most directly affected by such designation for the purpose of receiving and giving proper consideration to the views of any interested party. Such hearings shall be held no earlier than thirty days after the publication of a public notice thereof.

(f) After a marine sanctuary has been designated under this section, the Secretary shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this title and can be carried out without the regulations promulgated under this section.

SEC. 303. (a) Whoever violates any regulation issued pursuant to this title shall be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(c) A vessel used in the violation of a regulation issued pursuant to this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(d) The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this title, and to grant such

other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Secretary.

Sec 304. There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out the provisions of this title, including sums for the costs of acquisition, development, and operation of marine sanctuaries designated under this title, but the sums appropriated for any such fiscal year shall not exceed \$10,000,000.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to prohibit unregulated dumping of waste material into the oceans, coastal and other waters.

In accomplishing this purpose, the transportation and dumping of radiological, chemical or biological warfare agents and high-level radioactive wastes would be banned. There would also be a ban placed upon the transportation and dumping of all other waste material, unless authorized by a permit to be issued by the Administrator of the Environmental Protection Agency or the Secretary of the Army, as the case may be.

LEGISLATIVE BACKGROUND

No one knows the volume of wastes that have been dumped into the oceans in the past years. In fact, until a short time ago, the question was scarcely asked and then only by an obscure breed of scientists, known as ecologists.

The entire question of ocean disposal of waste material has recently been thrust into prominence by the dumping of nerve gas and oil wastes off the coast of Florida, by the dumping of sewage and other municipal wastes off New York Harbor, and by a number of other and similar instances, all of which were the subject of hearings and investigation by this Committee during the 91st Congress.

In April of 1970, the Council on Environmental Quality, created as a result of legislation reported by this Committee, was directed by the President to make a study of ocean disposal of wastes. In October of 1970, the Council published its report to the President, entitled "Ocean Dumping—A National Policy." The report forms the basis for this legislation, and points up the immediacy and the severity of the problems that have been created and the critical need for a national policy on ocean dumping.

As a part of his announced environmental program, the President transmitted to Congress on February 10, 1971 legislation to implement the recommendations of the Council's ocean dumping report. The executive communication was introduced by Congressman Edward A. Garmatz, Chairman of the Committee, as H.R. 4723. Identical bills were introduced by Congressmen Pelly, Kemp, Ruppe, Chamberlain, Gerald Ford, and Winn and cosponsored by Congressmen Mailliard, Mosher, Grover, Keith, Goodling, Bray, McDonald of Michigan, Forsythe, Bob Wilson, Michel and Broyhill of North Carolina. Thirty-six other bills were introduced on the subject, some of which are similar to H.R. 4723 and some of which contain provisions and covers areas not included in H.R. 4723.

Joint hearings were held on the legislation by the Subcommittee on Oceanography and the Subcommittee on Fisheries and Wildlife Con-

servation on April 5, 6, and 7, 1971. Subsequent to the hearings and extensive executive sessions, the Subcommittees unanimously reported to the full Committee a clean bill, H.R. 9727, which is in essence, H.R. 4723 with amendments. H.R. 9727 was introduced by Congressman Garmantz and cosponsored by 24 other members of the Committee. An identical bill to H.R. 9727 was introduced by Mrs. Sullivan, 10 other members of the Committee, and Mr. Frey.

The Committee was impressed by the wide range of witnesses testifying at the hearings in support of the legislation. All the witnesses were in favor of the purposes of the legislation although some concern was expressed during and after the hearings by representatives on behalf of the merchant shipping industry, the dredging industry, the port authorities, and the chemical industry. The Committee believes that the bill, as unanimously reported, satisfies all of the concerns expressed on behalf of the above mentioned interests.

As introduced, H.R. 4723 would vest in the Administrator of the Environmental Protection Agency (EPA) authority to bar the transportation of waste material for dumping into the oceans, coastal waters and Great Lakes, except as might be authorized by permits issued by the Administrator. It would also control the actual dumping into that part of those waters within the jurisdiction of the United States. In determining whether to approve a permit application, the Administrator would be required to consider (1) the impact of dumping on the marine environment and human welfare and (2) other possible locations and methods of disposal, including land-based alternatives, but in no event would a permit be issued for a dumping in violation of applicable water quality standards. The Administrator would be authorized to designate recommended sites for dumping of specified materials. The Secretary of Army—through the Corps of Engineers—would continue to exercise its authority regarding dredging, filling, harbor works and maintenance of navigability, subject to a prior certification by the Administrator that the activity would conform to the provisions of the Act and the regulations issued thereunder. The AEC's authorities with respect to radioactive materials under the Atomic Energy Act of 1954 would not be affected. However, the AEC would be required to consult with EPA prior to issuing any permit to conduct any activity otherwise regulated by this Act, and to comply with standards set by the Administrator. Violators of the Act would be subject to both civil and criminal penalties, with a maximum in each case of \$50,000 per offense.

H.R. 9727, as reported by the Committee, is an improved version of the Administration bill, H.R. 4723. While it follows the scheme of H.R. 4723, it would eliminate the exception provided to the AEC, and would require it to comply with the requirements of the Act, just as all other Federal agencies must do. Also, it would eliminate the certification requirement imposed upon the activities regulated by the Corps. In lieu thereof, the Corps would have to apply the criteria established by the Administrator. The Corps would also be prohibited from issuing permits for dumping which would violate the designation of critical areas by the Administrator, where no dumping of certain material could take place. However, after consultation with the Administrator, the Corps could override the Administrator's designation if the Corps determined that no economically feasible alternative

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would reasonably be available. In addition, the bill would impose an absolute ban upon the dumping of radiological, chemical or biological warfare agents and high-level radioactive wastes. The disposition of any effluent from outfall structures would be excluded by the Act to the extent that such disposition were otherwise regulated by the Federal Water Pollution Control Act or the 1899 Refuse Act. Also, the bill would authorize a part of the criminal fines to be paid to persons giving information leading to conviction under the Act, subject to an overall limitation of \$2500 per offense. The Attorney General would be given authority to seek injunctions to prevent violations of the Act, and private citizens would be given similar powers.

Additionally, H.R. 9727 contains two new titles. Title II would provide authority for short-range research by the Secretary of Commerce on the environmental effects of ocean dumping within an appropriation limitation of \$1 million for each of three years. It would also authorize the National Science Foundation to develop a comprehensive and continuing research program with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems, within an appropriation limitation of \$1 million for each of three years. Title III of the bill would authorize the Secretary of Commerce to establish marine sanctuaries in cooperation with the affected States and, where necessary, with the governments of other countries. The authorization under this title—including costs of acquisition, development, and operation of marine sanctuaries—would be limited to \$10 million for each of three years.

H.R. 9727, with an amendment, was ordered reported by the Committee unanimously by voice vote, a quorum being present.

BACKGROUND AND NEED FOR THIS LEGISLATION

The oceans, covering nearly three-quarters of the world's surface, are critical to maintaining our environment, for they contribute to the basic oxygen-carbon dioxide balance upon which human and animal life depends. Yet man does not treat the oceans well. He has assumed that their capacity to absorb wastes is infinite, and evidence is now accumulating on the damage that he has caused. Pollution is now visible even on the high seas—long believed beyond the reach of man's harmful influence. In recent months, worldwide concern has been expressed about the dangers of dumping toxic wastes in the oceans. (Richard M. Nixon, transmitting "Ocean Dumping—A National Policy" to the Congress, October 1970).

No one knows how long we can continue to pollute the seas with chlorinated hydrocarbon insecticides, polychlorinated biphenyls, and hundreds of thousands of other pollutants without bringing on a world-wide ecological disaster. Subtle changes may already have started a chain reaction in that direction. The true costs of our environmental destruction have never been subjected to proper accounting. The credits are localized and easily demonstrated by the beneficiaries, but the debits are widely dispersed and are borne by the entire population through the disintegration of physical and mental health, and, even more importantly, by the

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potentially lethal destruction of ecological systems. Despite social, economic, and political barriers to proper ecological accounting, it is urgent and imperative for human society to get the books in order. (Ehrlich, Paul R. and Anne H., in *The Food-From-the-Sea Myth*, Saturday Review, April 4, 1970.).

These parallel quotations from sources which are rarely found in conjunction indicate the almost complete current unanimity of concern for the protection of the oceans from man's depredations. In the hearings before this Committee, the witnesses were unanimous in their support for the purposes of this legislation. No argument was raised by any witness as to the desirability of creating a system of protection from unregulated dumping of waste material into the oceans.

Jacques-Yves Cousteau, famed scientist and oceanographer, provided a statement underscoring the critical nature of the issues before the Committee:

Because 96 percent of the water on earth is in the ocean, we have deluded ourselves into thinking of the seas as enormous and indestructible. We have not considered that earth is a closed system. Once destroyed, the oceans can never be replaced. We are obliged now to face the fact that by using it as a universal sewer, we are severely over-taxing the ocean's powers of self-purification.

The sea is the source of all life. If the sea did not exist, man would not exist. The sea is fragile and in danger. We must love and protect it if we hope to continue to exist ourselves. (Hearings, Page 162)

The visible pollution on the high seas, referred to in the President's message, was described vividly by Thor Heyerdahl, who stated just a year ago that he had found evidence of pollution and dumping of materials throughout his trip from Africa to the West Indies. These issues formed the focus and background for the hearings on the Administration's ocean dumping legislation.

TITLE I

Title I of H.R. 9727 deals with the problems addressed by the Administration's proposal: the dumping of materials into United States waters, and the transportation for dumping of materials from the United States by anyone and the transportation for dumping from any place in the world by Federal agencies. Title I provides a comprehensive system for the regulation of these activities.

The major impact of this legislation will be felt in the coastal and estuarine areas along this nation's shores. This is highly appropriate, since the quality of these waters will have a major effect on United States commercial and sport fishing activities, as well as upon that portion of the oceans which most directly affects the citizens of this country.

Man has long been accustomed to treat the oceans as an infinite resource, providing food supplies and recreation to whoever requires them, whenever they require them. This is clearly not the case: these resources are very far from being infinite. Dr. John Ryther at the

Woods Hole Oceanographic Institution has calculated, in a widely circulated article, that the total annual sustained yield from the world's fisheries, assuming that these fisheries do not change substantially in their nature, is roughly 100 million metric tons. In his calculations, Dr. Ryther did not, because he could not, take account of the effects of wide scale pollution upon these resources. The Food and Agriculture Organization of the United Nations, in its most recent yearbook of fisheries statistics, indicated that for the first time since World War II, the total world catch of fisheries *declined* in 1969 by over one million metric tons, from 64.3 to 63.1 million metric tons.

We do not have enough information to say whether this ominous decline should be attributed to pollution, to overfishing, or to other factors, alone or in combination. We can, however, say that so long as the possibility exists that there is a relationship between pollution and the declining fish catch (and there clearly is), it seems to the Committee only a prudent exercise of environmental good manners to begin to cut back the rate of disposition of waste into the world's oceans.

Relying heavily upon an extensive report by the Dillingham Corporation for the Department of Health, Education, and Welfare, the CEQ report "Ocean Dumping—A National Policy" (H. Doc. 91-399) cited a wealth of facts and figures to support its strong recommendations that the United States should limit, and in some cases, absolutely ban the dumping of materials into the oceans. The report indicated, for example, that over 48 million tons of waste were dumped into the oceans from the United States in 1968 (the last year for which figures were available). It pointed out that these figures were incomplete since there were certainly a number of kinds of dumping that could not be identified. The major contributors to the materials thus disposed of were dredge spoils (over 38 million tons), industrial wastes and sewage sludge (each over 4 million tons).

These figures, indicating the weight of materials disposed of, do not take account of materials of relatively low weight but high toxicity, such as radioactive wastes and chemical and biological warfare agents. These latter would include materials such as herbicides and nerve gas (recently considered in detail by this Committee in hearings in August of 1970), and pose a hazard of unknown but substantial dimensions. Together with high-level (or "hot") radioactive wastes, these were considered so hazardous by your Committee that it recommended legislation to provide an absolute ban—not even EPA would be permitted to authorize their disposal at sea. This result was similarly recommended in the CEQ report on ocean dumping already referred to.

It might be noted also that in placing an absolute ban upon the dumping of high-level radioactive waste, the Committee would certainly not wish to encourage the dumping of any other radioactive materials. The Committee was impressed with papers submitted to it by Dr. Jerold Lowenstein of the Oceanic Society on the potential hazards of radioactive pollution of the oceans (Hearings, Page 373). It should also be noted that the AEC spokesman who testified on the legislation indicated that very little radioactive material has been dumped into the oceans in recent years and that the AEC did not contemplate expanding its program in this regard.

The entire issue was put into perspective on the opening day of the hearings in a reference to a question raised by a scientist at the 1970 Conference on the Oceans in Malta (*Pacem In Maribus* Conference), who wondered aloud if perhaps the highest and best use of the oceans might not be to serve as a dump for man's wastes. Considering this end and the many other issues raised in the course of the hearings, it seems fair to say that the Committee wished to emphasize its answer to that question as a very large "No".

A recent study by the Massachusetts Institute of Technology definitively shows that, at least for coastal cities, the "cheapest" place to dispose of wastes is in the ocean. Many cities have been doing this for years. Last Fall, this Committee held hearings on New York City's extensive dumping of wastes off Sandy Hook, as the "least cost" available alternative. It is apparent, however, that economics do not tell the entire story. A number of non-economic costs are also associated with this technique of disposal, which we are now beginning to identify with more clarity: visual blight, destruction or decimation of fisheries and even the poisoning of human beings.

H.R. 9727 will enable this country to restore a proper balance between its economic and environmental values, as these relate to ocean dumping. It is clear that ports and harbors cannot be allowed to silt up and that cities cannot be permitted to strangle in their own waste production, but neither can these problems be resolved at the cost of threatening a critical resource for life on this planet. In this bill we give to the agencies of Government tools with which they can balance these values.

The Committee wishes to emphasize its awareness that the types of problems with which H.R. 9727 deals are global in nature. We are not so blind as to assume that in dealing with the problems created by our own ocean dumping activities, we are thereby assuring the protection of the world's oceans for all mankind. Other nations, already moving to grapple with these troublesome issues, also will and must play vital roles in this regard.

At the same time, however, your Committee recognizes that the United States has been heavily involved in ocean dumping activities and that the kinds of materials that our highly industrialized, commercial nation may be forced to dispose of may be particularly hazardous to the health of the oceans. Even more importantly, we believe strongly that someone must take the first steps.

This we believe we have done in this legislation.

TITLE II

Closely aligned to the problem of slowing down the rate of ocean disposal of wastes is the need for a clearer understanding of the consequences of this activity, both as to short and long term effects. For this reason, the Committee added a new title to the bill to direct Government agencies to encourage the study and discussion of these broader questions. Title II authorizes and directs the Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration, and in cooperation with other agencies already involved in this area, to develop a program of research on the effects of ocean dumping, as authorized by H.R. 9727. It is assumed that the EPA,

which is already studying alternatives to ocean dumping, will work closely with NOAA on this problem.

Another troublesome issue, even more difficult to define, relates to the need for some system of monitoring of the world's oceans, with a view to identifying new problems before they become full-blown crises. For example, it was not until years after the wide-scale introduction of DDT that scientists discovered this compound in animals in Antarctica, thousands of miles from places where DDT was actually applied; scientists are now beginning to discuss the pollution potential of polychlorinated biphenyls (PCB's) as a global pollutant of significant dimensions, widely dispersed in the biosphere.

Some method must be established to provide an "early warning system" for these types of problems and others which might otherwise have been identified as such before they had acquired so much momentum that they would have become virtually unstoppable. This type of early warning system cannot and should not be established by any one nation, or group of nations. All mankind is vitally concerned with the health of the oceans and this nation can only support such an effort as a willing participant. Title II provides a mechanism by which NOAA and the National Science Foundation may participate in such an effort, providing funds and encouraging and urging the widest possible dissemination of the information so derived.

It is a step only, but it is a long step in the right direction.

TITLE III

Title III deals with an issue which has been of great concern to the Committee for many years: the need to create a mechanism for protecting certain important areas of the coastal zone from intrusive activities by man. This need may stem from the desire to protect scenic resources, natural resources or living organisms; but it is not met by any legislation now on the books. This title will permit the Secretary of Commerce, acting through NOAA, to designate certain areas up to the edge of the Continental Shelf as marine sanctuaries, subject only to the powers of the Governors of the coastal states to approve or disapprove such portions of the proposed sanctuaries as may lie within the boundaries of those states' territorial jurisdiction. It also provides adequate sanctions to permit the Secretary to regulate these sanctuaries.

The pressures for development of marine resources are already great and increasing. It is never easy to resist these pressures and yet all recognize that there are times when we may risk sacrificing long-term values for short-term gains. The marine sanctuaries authorized by this bill would provide a means whereby important areas may be set aside for protection and may thus be insulated from the various types of "development" which can destroy them.

SECTION-BY-SECTION ANALYSIS

Section 1. The Act may be cited as the "Marine Protection, Research, and Sanctuaries Act of 1971".

Section 2. This section makes findings as to the dangers presented by the unregulated dumping of materials into the oceans, coastal, and

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other waters, and declares congressional policy that the United States should regulate the dumping into those waters of all types of materials, and should prevent where possible the dumping of any material which could adversely affect the human and marine environment. The purpose of the Act is, therefore, declared to be the regulation of the transportation of material for dumping into the oceans, coastal, and other waters, and as to those waters within the jurisdiction of the United States, to regulate the dumping whether from a source in the United States or from outside.

Section 3. This section defines the various terms used in the bill.

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Oceans, coastal, and other waters" includes all oceans, gulfs, and bays, whether or not outside the territory of the United States, and coastal waters reaching inland to the point where the tide ebbs and flows. It further includes the Great Lakes, the connecting waters between those lakes, such as the St. Clair and St. Mary's Rivers. It also includes the St. Lawrence River.

(c) "Material" means matter of any kind or description, except for oil, as that term is defined in section 11 of the Federal Water Pollution Control Act, as amended, and sewage from vessels within the meaning of section 13 of the same Act. These two exceptions are made because those two materials are considered to be adequately regulated under the cited Act.

(d) In a geographical sense, the term "United States" extends to the several States, Puerto Rico, the Canal Zone, the District of Columbia, the territories and possessions of the United States, including Guam, and the Trust Territory of the Pacific Islands.

(e) The term "person" includes any private person or entity, such as a corporation or partnership, and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of a State or local unit of government, or of a foreign government.

(f) The term "dumping" refers to any disposal of material. It does not, however, include the disposal of material from outfall structures where the disposal from those structures is regulated under either the Federal Water Pollution Control Act or the Refuse Act of 1899. Outfall structures are considered to be identifiable, artificial, or artificially adapted natural discharge of effluents which are transmitted either from facilities located on shore or from artificial islands or other fixed structures located offshore. "Outfall structures" do not include the primary means of dredging. In addition, "dumping" does not include the routine discharge of effluent which is incidental to the propulsion of vessels or which results in a discharge of effluent overboard from the operation of motor-driven equipment of vessels, such as power winches. Further, "dumping" does not include the placement of construction materials in the construction of any fixed structure or artificial island, nor does it include the intentional placement of a device either in the waters covered by the bill or on or in the submerged land beneath such water, if the placement of the device is for a purpose other than mere disposal, and if the placement of the construction material or the device is otherwise regulated, either by an appropriate Federal or State statute, or as a part of an authorized Federal or State program. Finally, "dumping" does not include the deposit of oyster shells or other mate-

rial for the purpose of developing, maintaining or harvesting fisheries resources, if the deposit of the oyster shells or other materials is either regulated by appropriate Federal or State statutes, or occurs as a part of an authorized Federal or State program.

(g) "District Court of the United States" includes the District Courts of Guam, the Virgin Islands, Puerto Rico, and the Canal Zone and, in relation to American Samoa and the Trust Territory of the Pacific Islands, the District Court for the District of Hawaii.

(h) "Secretary" means, except for Title III of the bill, the Secretary of the Army.

(i) "Dredged or fill material" means that material which is taken from navigable waters for purposes of disposal or deposited in those waters for the purpose of building up land areas.

(j) "High-level radioactive waste," as defined in the statute, is intended to refer to the physically and radioactively "hot" material, often with a half-life extending into the thousands of years, which is produced as a result of refining fuel cores for nuclear reactors. In recent months, the problems associated with the disposal of these materials has become acute, and the State of Kansas is presently engaged in a dispute with the Atomic Energy Commission as to the proper place and method of disposing of high-level radioactive wastes; the AEC wishes to dispose of these in an abandoned Kansas salt mine, and the State strongly prefers another location. This definition, coupled with the prohibitions contained in Section 101, is intended to assure that, wherever these and similar wastes are ultimately placed, they will not be disposed of in the oceans.

TITLE I—OCEAN DUMPING

Prohibited Acts

Section 101(a). This subsection prohibits the transportation from the United States for the purpose of dumping into the oceans, coastal, or other waters of any radiological, chemical or biological warfare agents and, as stated above, high-level radioactive wastes. This would prohibit the dumping of herbicide compounds intended for use in warfare activities, and would further bar the dumping of nerve gases, as occurred last Fall off the coast of Florida. As to these materials, no permit could lawfully be issued by the Administrator; as to all other materials, as defined in the Act, these might be transported for dumping only pursuant to a permit issued under the provisions of section 102, 103 or 104 of this title.

(b) This subsection prohibits the dumping, whatever the origin or source, into the territorial waters of the United States covered by the bill, or into the contiguous zone, to the extent that the dumping in the contiguous zone may affect the territorial sea or territory of the United States, of any radiological, chemical, or biological warfare agent or high-level radioactive waste. It also prohibits the dumping of any other material covered by the bill whatever its origin or source, into the same waters, except as authorized in a permit issued under section 102, 103 or 104 of this title.

(c) This subsection prohibits the transportation of any radiological, chemical, or biological warfare agent or high-level radioactive waste by any Federal employee or agency from a source outside the United States for dumping into the waters covered by this bill. It also bars a

Federal employee or agency from transporting any other material for dumping into these waters from a location *outside* the territory of the United States, except as may be authorized by a permit.

EPA Permits

Section 102 (a) This section authorizes the Administrator of the Environmental Protection Agency to issue permits (A) for the transportation of material, other than (1) material banned in section 101 and (2) dredge or fill material, for dumping into the ocean, coastal, or other waters, or (B) for the dumping of such material into waters within the territorial jurisdiction of the United States, or into the contiguous zone to the extent that the dumping in the contiguous zone may affect the territorial sea or territory of the United States. Before issuing the permit, the Administrator must give notice and an opportunity for public hearings. The Committee intends that this notice shall be made to the public and shall provide a reasonable period of time within which interested persons may express their views concerning the permit application. In the event that the Administrator determines that a new question is presented, that the implications of granting or denying a permit are significant or that there is substantial public interest in the application, it is expected that he will hold a public hearing before reaching a determination as to whether a permit should be issued and if so, what the terms of the permit should be. In addition, the issuance of a permit may come only after the potential permittee has shown that the proposed activity will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems (which includes fish and other resources), or the economic potentialities which would be affected by the permitted activity.

In order to make the above required determination, the Administrator is required to establish and apply certain criteria for reviewing and evaluating permit applications, and in the establishment of such criteria or revisions thereof, the Administrator is required to consult with all interested Federal departments. To the extent that the criteria may affect the civil works program of the Army, he is specifically required to consult with the Secretary of the Army. The criteria as established or revised must take into account, but need not be limited to, the need, the effect on human health and welfare, the effect on fisheries resources, and the effect on marine ecosystems of dumping, as well as the persistence and permanence of the effects, the effect of particular volumes and concentrations of materials, an evaluation of appropriate alternative locations and methods of disposal, and the possible effects of denying a requested permit.

In addition to the application of established criteria, and the opportunity for public hearings, the Administrator is required to consult with interested Federal and State agencies as he deems useful or necessary.

Finally, and regardless of the other factors already described, the Administrator is forbidden by this Act to issue a permit for a dumping of material which will violate applicable water quality standards. In the event that such a permit were issued, it would terminate upon a finding that it did in fact violate such standards; similarly, permits would have to be issued only with the understanding that water qual-

ity standards can and do change, and that these may later result in the modification of permits which were perfectly proper when issued but which have become improper because the standards in question were later strengthened. Permit "rights" under this Act are in no sense "vested rights".

(b) The Administrator may establish and issue various categories of permits.

(c) Considering the criteria previously established pursuant to subsection (a), the Administrator may designate sites or times which he recommends for dumping, and, when he finds it necessary to protect critical areas, shall also designate sites and times within which certain materials may not be dumped. The Committee is of the strong opinion that certain areas are so critical that it may be necessary for the Administrator to prohibit the dumping either of all material, or of certain kinds of material that may affect that area. The types of areas the Committee has in mind are shellfish beds, breeding or spawning areas, highly susceptible resort beaches, and similar areas. The language of the section makes it clear that this action to create, in effect, "prohibited areas" for dumping certain materials is to be used with circumspection. The Administrator is not expected to create "prohibited areas" unless and until he finds that such action is necessary to protect these areas. It follows that the extent of the areas so designated should be no greater than necessary and that the specific material banned for dumping in the designated area must be of a type which would affect the area to an unacceptable degree were it to be introduced therein. Prior to designating "prohibited areas," it is intended that the Administrator consult with the Secretary of the Army if the banned materials concern a permit program for which the Secretary is responsible under this Act.

Corps of Engineers permits

Section 103. (a) This section authorizes the Secretary of the Army to issue permits for the transportation of dredged or fill material for dumping into the oceans, coastal, and other waters, or permits for the dumping of such material into such waters within the territorial jurisdiction or contiguous zone of the United States. The contiguous zone dumping permit requirement is involved only to the extent that the dumping may affect the territorial sea or territory of the United States. Before issuing the permit, the Secretary must give notice and an opportunity for public hearings in the same manner as described with respect to section 102. In addition, the issuance of the permit may come only after the Secretary determines that the activity permitted will not unreasonably degrade or endanger human health, welfare or amenities, or marine ecological and environmental systems (which includes fish and other resources) or the economic potentialities which would be affected by the permitted activity. In order to make that determination, the Secretary is required to apply the criteria established by the Administrator of the Environmental Protection Agency pursuant to section 102. He is further required to evaluate the effect on navigation, economic and industrial development, and foreign or domestic commerce of the United States which a denial of a permit request would have. In applying the criteria of the Administrator, the Secretary is required to consult with the Administrator and to give due

consideration to the Administrator's views and recommendations, in regard both to the application of the criteria and to the designations of the Administrators as to recommended sites or times for dumping. Finally, the Secretary is bound to comply with the "prohibited areas" designations of the Administrator under subsection 102(c), unless after consultation with the Administrator, the Secretary certifies that there is no economically feasible alternative reasonably available. The scheme of the subsection, in effect, provides that as to both the "recommended sites" and the "prohibited areas," the Secretary shall follow the Administrator's determination. Nevertheless, it is recognized that in some situations to follow either the recommendation or the ban would mean the termination of an authorized project.

Therefore, the Administrator and the Secretary are expected to consult together closely at all stages. The Secretary, upon certification that there is no economically feasible alternative reasonably available, will not be bound by the determination of the Administrator. Even in the latter case, of course, the Secretary is expected to conform as closely as possible to the Administrator's determinations. The determination by the Administrator and the certification by the Secretary are, of course, matters of record, to which the public is assured full access by the terms of this Act.

In establishing criteria for dumping, the Administrator is clearly required to consider economic factors and these in turn would be taken into account in the designation of recommended sites for dumping or prohibited sites or times for dumping. It is anticipated that the number of occasions in which the Secretary's would disregard the Administrator's designations under this subsection would be rare. If this should prove not to be the case, necessary corrective action can be taken by the committee at a later date.

The Committee expects that until such time as economic and feasible alternative methods for disposal of dredge material are available, no arbitrary or unreasonable restrictions shall be imposed on dredging activities essential for the maintenance of interstate and foreign commerce, and that, consistent with the intent of this Act, the Committee expects the disposal activities of private dredgers and the Corps of Engineers will be treated in a similar manner.

(c) This subsection authorizes the Secretary, in relation to Federal projects, to establish the procedures required under the bill by regulations, rather than by the permit process. This authority is intended to permit an internal regulatory scheme for the Corps of Engineers rather than having the Army issuing permits to itself.

Permit conditions

Section 104. (a) This subsection contains the specific items which are required to be contained in any permit issued under this title. It applies to the general permits authorized by subsection (c) of this section, as well as the specific permits authorized under section 102 and 103. Included within the permit provisions there shall be statements as to (1) the type of material involved, designated with sufficient particularity to identify it for the purpose of surveillance and enforcement, (2) the amount of material authorized, whether for transportation or for dumping, (3) the exact location where the transportation will be terminated or where the dumping will occur, (4) the

effective period of the permit, including its specific expiration date, (5) any specific provision deemed necessary to insure effective monitoring or surveillance, and (6) any other matters which the issuing officer deems appropriate.

(b) This subsection authorizes the promulgation by the permit grantor of processing fees and reporting requirements.

(c) This subsection authorizes either the Administrator or the Secretary, in their respective areas of authority, to issue general permits in connection with specific material which are determined to have a minimal adverse impact on the areas designed. In other words, where certain materials are of little significance when dumped in certain areas, the issuing official may use a general permit system rather than require a specific permit for each transportation or dumping operation.

Notice and hearing requirements for the general permit procedures would be similar to those described with respect to Section 102, and of course the general permits would be subject to the criteria to be established by that Section:

(d) This subsection authorizes the issuing official to limit, deny, alter, or revoke, partially or entire, any permit where he finds that the permitted or requested activity cannot be carried out consistently with the criteria and other factors required to be applied by him when evaluating a permit application. The subsection also requires that any action subsequent to the original issuance of a permit can be taken only after the same type of notice and opportunity for hearing has been afforded the affected person or the permittee.

(e) This subsection makes it clear that the burden of providing sufficient information lies on the permit applicant; the issuing official is required to get from the applicant the information necessary for the determination required before a permit is issued.

(f) This subsection includes a requirement that all information received, either by the Administrator or Secretary, as a part of the permit process shall be made available to the public as a matter of public record, at every stage of the process leading up to the issuance of a permit. The requirements of the subsection will be met where the information is available at a reasonable place for inspection, at reasonable times, and does not envision that all internal agency memoranda shall be open to public inspection. It does require, however, that once the final determination has been made, that determination will be made immediately available as a matter of public record together with the supporting reasons for that determination.

(g) This subsection requires a copy of any Title I permit to be placed in a conspicuous place in the vessel to be used for transportation of dumping, and further requires that, in order to keep the enforcement agency informed, an additional copy shall be furnished to the appropriate Coast Guard official having the responsibility for monitoring and enforcing the particular permit.

Penalties

Section 105. (a) Any person, who violates a provision of the title, or a regulation promulgated under the title, or a permit issued under the title, shall be liable to a civil penalty of not more than \$50,000, to be assessed by the Administrator. The Committee considered whether the

assessment authority should be divided between the Administrator and the Secretary, each acting in his own sphere of responsibility. It was concluded that the total assessment authority should be given to the Administrator and that this provision would insure a simpler and more uniform procedure for penalty assessments. No penalty may be assessed under this section without notice to the person charged and an opportunity for a hearing, should that person desire such a hearing. In determining the amount of penalty to be assessed, whether or not a hearing is sought by the person charged, the Administrator is required to evaluate the gravity of the violation and the individual's demonstrated good faith in seeking to correct the situation after he has been notified of a violation.

In addition, this section provides that, for good cause shown, the Administrator may entirely remit or mitigate an assessed penalty to a lesser amount. This provides the Administrator with some flexibility even after a penalty assessment has been determined. However, in order to provide for a reasonably definite assessment scheme, it is expected that the remission or mitigation authority will be utilized where the person against whom the penalty has been assessed presents to the Administrator facts which warrant subsequent ameliorative action, such as newly discovered facts which were not known at the time of, or prior to, the assessment, and could not have been readily ascertained by the exercise of due diligence. Upon failure of the offending party to pay the penalty as finally assessed, collection procedures through appropriate court action are authorized.

(b) In addition to the civil penalty under subsection (a), this subsection provides for a criminal penalty of not more than \$50,000, or imprisonment for not more than one year, or both, for any person who is convicted of knowingly violating this title or regulations, or permits issued thereunder. The term "knowingly violates" is intended to refer to a conscious act or conscious omission of the offender which amounts to a violation of the law, regulation or permit. It does not require that the offender have knowledge that the act which he consciously commits or consciously omits constitutes a violation. Should a fine be assessed following a conviction resulting from information supplied by any person other than one who has the legal duty to report such incident, the person or persons furnishing the information are entitled to receive one-half of the assessed fine, or \$2500, whichever is less.

In H.R. 4723, as submitted, Federal employees and agencies were, by definition, excluded from the application of penalties. As a result of its careful consideration of this issue, the Committee has elected to take a different course: this bill subjects Federal personnel and agencies to the same penalties as private individuals, entities, and local governmental personnel and organizations. It seemed to your Committee unrealistic to expose a state employee or a private individual to penalties from which the corresponding Federal employees would be exempt. The usual explanation of the exemption of Federal employees is that their misconduct may be handled through administrative procedures. The provisions of this bill do not change that possibility.

(c) This subsection provides that for penalty purposes each day of a continuing violation shall constitute a separate offense. The same is

true where a violation is committed by dumping from several units, such as vessels or aircraft, in one dumping operation.

(d) This subsection provides for equitable relief by the United States to enjoin violations of the title, of regulations or of permits.

(e) This subsection provides for the *in rem* liability of a vessel, used in a violation, for any civil penalty assessed or criminal fine imposed. It does exempt the vessel from liability, unless one or more of the owners or, in the case of a bareboat charter, one or more of the charterers was either a consenting party or privy to the violation.

(f) This subsection provides authorities and procedures under which a permit may be revoked or suspended in the event of a permit violation.

(g) This subsection provides for a civil suit by any person on his own behalf to enjoin violations of the Act or violations of regulations, or of an issued permit. It limits the institution of such suits in equity to those situations where the Administrator has not commenced appropriate action within a certain period of time and it bars such suits if an appropriate civil action has been initiated, an appropriate criminal action has been initiated, if appropriate administrative action to impose a penalty has been undertaken, or if revocation or suspension of a permit has been initiated. When a suit is filed under this subsection, the United States may intervene as a matter of right. Furthermore, in issuing a final order in any such suit the court may award certain costs of litigation to the party initiating the suit, when it concludes, in its discretion, that the suit was meritorious, and not filed for the sake of mere harassment. In the event that the court concludes that the purpose of the suit *was* harassment, the court may award such costs to the defendant. It is not intended that the right of action provided by this subsection shall in any way restrict or supersede any other right to legal action which is afforded the potential litigant in any other statute or the common law.

(h) This subsection exempts from the penalty procedure any action which otherwise would be subject to penalty, when initiated on a vessel where found necessary, in an emergency, to safeguard life. This subsection cannot be used to justify the initiation of *transportation* for dumping. It is intended to relieve from liability those citizens already at sea where lives are endangered and where appropriate permit applications would not be possible. When any such emergency dumping occurs, it shall be reported to the Administrator under such conditions as he prescribes.

Relationship to other laws

Section 106. (a) In effect, this subsection supersedes any other conflicting statutory authority which provides for the issuance of permits or other authorizations for transporting or for dumping those materials in those waters covered by this Act.

(b) This subsection preserves from the effect of subsection (a) those activities undertaken and permits issued under the authority of the Rivers and Harbors Act of 1899 which are taken before the effective date of this title. Actions taken subsequent to the effective date of this title will be covered by its provisions, including sections 103, 104 and subsection (a) of this section, as well as other provisions of this title.

(c) This subsection insures that, as to the protection of navigation, the authority of the Secretary of the Army is recognized; therefore, the Administrator must insure, where appropriate, that the disposition of material under a permit issued by him shall not unreasonably impair navigation. The final determination on this point is left with the Secretary of the Army.

(d) This subsection preempts state regulation of activities regulated by this title. It provides, however, that where any state wishes to protect its waters in a manner above and beyond that reflected in the criteria of the Administrator, that state may propose to the Administrator additional criteria which it finds desirable for application to its territorial waters or to waters affecting its territorial waters. If the Administrator finds, after the same notice and opportunity for hearing procedure required under section 102, that the proposed criteria are not inconsistent with the purposes of this title, he may adopt the proposed state criteria in whole or in part. Thereafter such additions will become the Federal criteria for those waters and will be regulated and enforced in the same manner as other criteria under section 102.

(e) This subsection provides that nothing in this title shall be deemed to affect in any way any provision of the Fish and Wildlife Coordination Act, as amended. This provision is not intended to imply that any other statutes are affected other than as specifically provided in subsection (a) of this section and in section 110. For instance, there is no intention that this act shall in any way limit the provisions of the National Environmental Policy Act of 1969 (P.L. 91-190) nor is it intended to affect the Memorandum of Understanding relating to public works projects dated July 13, 1967, and pertaining to consultations between the Department of the Interior and the Department of the Army, relative to those works and their relationship to the Fish and Wildlife Coordination Act.

Enforcement

Section 101. (a) This subsection authorizes agency agreements for the utilization of personnel, services and facilities of other Federal or State departments, agencies and instrumentalities.

(b) This subsection authorizes the delegation of responsibility and authority for reviewing and evaluating permit applications both within the agency involved and to other Federal departments.

(c) This subsection places in the Coast Guard the surveillance and enforcement responsibility to prevent unlawful transportation of material for dumping, or dumping, as specified in this title, the regulations issued thereunder and the permits issued pursuant thereto.

Regulations

Section 108. This subsection authorizes necessary regulations to implement the title.

International Cooperation

Section 109. This subsection directs the Secretary of State to take appropriate measures to encourage and promote the acceptance and implementation of the policies of this Act throughout the international community.

Repeal of other laws

Section 110. This section repeals the Act of June 29, 1888, as amended, covering the transportation for dumping of materials from New York Harbor and other port areas, as well as a proviso in the Refuse Act of 1899, which prevented the supersession by that Act of the Act of June 29, 1888. It also repeals a section of the Act of August 5, 1886, relating to permits for the dumping of debris of mines or stamp works. In the case of each repealer, this title provides the superseding regulatory scheme.

Effective date and savings provision

Section 111. (a) This subsection provides that this title shall take effect 6 months after the date of enactment of this Act, and protects the legal effects of any legal action begun, or rights of action accrued, under any other provision of law prior to the effective date of this title.

Authorization for appropriations

Section 112. This subsection authorizes to be appropriated such sums as may be necessary for the purpose and administration of this title. The estimated costs are included later in this report.

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

Section 201. This authorizes the Secretary of Commerce, acting in most or all cases through the Administrator of NOAA, and in conjunction with the Coast Guard and EPA, to develop an extensive program of monitoring and research as to the effects of the dumping activities permitted under Title I of this Act. In so providing, the Committee stresses its concern that this and the other research activities authorized by this Act must be carried out in conjunction with other agencies of government with similar research programs. Duplication of research effort is the last thing that the Committee wishes to encourage—what we hope to accomplish in this section and title is to provide a means whereby research that is relevant to the objectives of this legislation may be carried out when no one else is already doing so. This section, and the next, authorize a three-year program beginning in the fiscal year in which this bill is enacted; the Committee will watch closely the ways in which it is carried out, and contemplates a later review of that program to determine how it may best be extended, if that proves desirable.

Section 202. This directs the Director of the National Science Foundation to undertake a comprehensive program of research as to the global effects of various activities presently engaged in by man and of other natural forces. As indicated earlier in this report, it is quite possible that subtle changes may be discerned in ocean ecosystems which foreshadow massive disruptions by people who are looking for those changes; if these should occur, we will best be served by becoming aware of these problems before they have become insoluble through sheer size or the passage of time. We are told, for example, that many sea birds are in danger of extinction through concentration of different types of economic poisons through ascending food chains; had we known of this danger a number of years ago, we might well

have developed ways by which to minimize or eliminate it. Today, it is probably too late.

The range of factors to be considered in developing these research programs is deliberately broad, so as not to prevent NSF from taking into account any factors that may seem relevant to the problems with which it is concerned. In the event that those engaged in such research programs are prevented from obtaining data that they consider critical, the Committee invites an early indication to that effect, so that we may consider what steps may be called for in order to see that such information is forthcoming.

(b) This instructs and authorizes the NSF to operate under appropriate foreign policy direction, and in conjunction with other nations or groups of nations, in carrying out its research responsibilities under this Act. It also provides a clear direction that, to the maximum extent possible, the results of this research will be widely disseminated and brought to the attention of the public and the appropriate decision-making bodies, both in this country and elsewhere.

(c) This requires an annual report on the research program, which need not be extensive, but which should indicate the nature of the research undertaken and the questions explored in sufficient detail to permit this and other interested Congressional committees to evaluate the progress of this program.

(d) This authorizes other government agencies to cooperate with the NSF to carry out the purposes of this Title. Here again, as in the case of Section 201, it is anticipated that every effort will be made to avoid duplication of research programs and effort.

(e) In further exposition of this policy, this subsection directs the NSF wherever feasible to use the personnel, services and facilities of other Federal agencies in carrying out the purposes of this legislation. Certainly the amount of funds authorized in this section are not sufficient in themselves to let NSF do more than scratch the surface of the ocean problems, and it is not the intention of this Committee to precipitate such an effort. It is rather our intention to give the NSF a responsibility to review what is being done today with a view to identifying the "holes" in current research, and then to examine those in enough detail to determine whether more massive applications of effort and funds may be called for. It is for this reason that we stress the need for continuing communications and coordination with other agencies of government.

(f) This provides the same type of authorization as it provided for NOAA in the preceding section: one million dollars a year, beginning in the year in which this Act is enacted, and extending for a three-year period, during which this program will be reevaluated and the Congress may elect to provide longer-term financing.

TITLE III—MARINE SANCTUARIES

Section 301. This section provides that the term "Secretary", when used in this title, refers to the Secretary of Commerce.

Section 302. (a) This subsection authorizes the Secretary of Commerce (acting through NOAA), after consultation with other Federal departments and agencies, to designate as marine sanctuaries those areas of the "oceans, coastal, and other waters", as defined in this Act,

which he finds necessary to preserve or restore for their conservation, recreational, ecological, or esthetic values. The waters susceptible to such designations are the inland waters of the United States as far inland as the point where the tide ebbs and flows, the Great Lakes and their connecting waters and that part of the St. Lawrence River within the jurisdiction of the United States, the territorial sea of the United States, the contiguous zone of the United States, and those waters lying above the outer Continental Shelf where the subsoil and seabed resources appertain to the United States. There is no intention to assert jurisdiction over the territorial waters of any other nation, nor is there any intention to assert jurisdiction other than that which already exists by statutory enactment or international law, outside the territorial limits of the United States. For instance, as to the contiguous zone of the United States, twelve miles seaward from the base line from which the breadth of the territorial sea is measured, the United States presently asserts jurisdiction only as to fisheries and mineral resources and as to the controls necessary to prevent infringement of fiscal, customs, immigration or sanitary regulations within its territory or territorial sea or to punish infringement of such regulations committed within its territory or territorial sea.

The consultation process is designed to coordinate the interests of various Federal departments and agencies, including the management of fisheries resources, the protection of national security and transportation interests, and the recognition of responsibility for the exploration and exploitation of mineral resources. It is expected that all interests will be considered, and that no sanctuary will be designated without complete coordination in this regard. In any case where there is no way to reconcile competing uses, it is expected that the ultimate decision will be made at a higher level in the Executive branch.

The reasons for designating a marine sanctuary may involve conservation of resources, protection of recreational interests, the preservation or restoration of ecological values, the protection of esthetic values, or a combination of any or all of them. It is particularly important therefore that the designation clearly state the purpose of the sanctuary and that the regulations in implementation be directed to the accomplishment of the stated purpose.

(b) This subsection provides for appropriate consultation with State officials before a marine sanctuary is designated which includes waters within the territorial limits of a State or any other waters lying above the subsoil or seabed, the natural resources of which are recognized by the Submerged Lands Act as belonging to the respective State or States. In addition to the consultation process, State interests are protected by suspending any sanctuary designation by the Secretary of Commerce as to any such waters until 60 days after publication of such designation and limiting the scope of any such sanctuary with respect to any part within the territorial jurisdiction of a State which the respective Governor certifies as so limited. The Governor may subsequently withdraw his objection in which case the designation, if still pending, will become effective immediately. This subsection is intended to protect State title and ownership in the lands beneath its navigable waters and seaward boundaries and is expected to be administered in a way to give full effect to that intent. As used

in this subsection; the term "state" refers to each of the fifty states of the Union.

(c) This subsection directs the Secretary of State to take appropriate action to obtain those international agreements which may be necessary to protect the purposes of any sanctuary which includes waters lying outside the contiguous zone.

(d) This subsection directs the Secretary of Commerce to take action under this title within two years and requires him to submit annual reports as to his actions.

(e) This subsection establishes a public hearing process designed to give all interested parties an opportunity to express their views. Public hearings need not be held on each proposal for a marine sanctuary; after sufficient facts are available to the Secretary which indicate that designation action appears to be desirable, such hearings should be held. The Secretary may develop preliminary information in any manner he sees fit; however, a scheme for processing preliminary information is considered necessary if the designation process is to be responsive to the public interest and need, and the Secretary is expected to develop and publish such a scheme.

(f) This subsection authorizes regulations to protect the purpose of the sanctuary designation. Any activity permitted within the sanctuary must, therefore, conform to the regulations issued under this subsection, and no activity shall be valid which does not do so.

It should be clear that such regulations, particularly as they apply to sanctuary waters lying outside the territorial limits, must not infringe rights recognized under international law or agreements, such as freedom of the high seas for navigation and for fishing, and, as to the territorial seas, the right of innocent passage and right of free passage through straits used for international navigation. The doctrines of sovereign immunity and of force majeure are not intended to be adversely affected by this title.

Section 303. (a) This subsection provides for a civil penalty of not more than \$50,000 for each violation of regulations issued pursuant to subsection (f). The regulations will apply to citizens and entities of the United States in any sanctuary designated. They will also apply to any foreign citizen to the extent that they regulate an activity recognized under international law, or under a specific agreement with a foreign government whose citizen is involved.

(b) This subsection provides for notice and an opportunity to be heard before a penalty is assessed. If, after proper notice, the person charged does not request such a hearing within a reasonable time to be designated by the Secretary, such a hearing need not be held. The subsection further provides the procedure for collecting the penalty, should it not be paid after assessment.

(c) This subsection provides for a libel *in rem* against any vessel used in violation of a regulation.

(d) This subsection provides for equitable relief to restrain violations of sanctuary regulations.

Section 304. This subsection provides the authorization for those appropriations necessary to carry out provisions of this title. The

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amounts necessary will depend in large measure on the exact costs of acquisitions of property interests in designated sanctuaries. In some cases, this will involve title to submerged lands; in other cases, it may involve purchase of lease interests. In addition, administrative expenses and development costs will be involved.

There are authorized to be appropriated such sums as may be necessary to carry out this title but not to exceed \$10 million per year for the three-year life of the authorization.

COST OF THE LEGISLATION

In the event the legislation is enacted into law, the Committee estimates the maximum cost to the Federal Government, based on information supplied by Government agencies, to be as follows:

The Environmental Protection Agency estimated its six year (1971-1977) cost of implementing Title I of the legislation would be \$2,000,000 for fiscal year 1972, \$4,000,000 for 1973, \$4,500,000 for 1974, \$4,000,000 for 1975, \$3,900,000 for 1976, and \$3,900,000 for 1977.

The Department of Transportation, on behalf of the Coast Guard, estimated the five-year (1972-1976) cost of carrying out its responsibilities under Title I of the legislation would be \$6,500,000. Based on information supplied to the Committee staff, it is estimated the sixth (1977) year cost to the Federal Government would be not more than \$800,000.

The Committee staff received information from the Department of Army, on behalf of the Corps of Engineers, that there would be no additional cost to the Federal Government in carrying out its responsibilities under Title I of the Act other than ordinary administrative costs associated with project applications.

In carrying out Title II of the Act for the three-year (1972-1974) life of the authorization, the maximum cost would be \$2,000,000 per year. In carrying out Title III of the Act for the three-year (1972-1974) life of the authorization the maximum cost would be \$10,000,000 per year.

IN SUMMARY [In millions of dollars]

	1972	1973	1974	1975	1976	1977
Title I:						
EPA.....	2.0	4.0	4.5	4.0	3.9	3.9
CG.....	1.6	1.5	1.4	1.0	1.0	.8
Corps.....	0	0	0	0	0	0
Title II:						
Com.....	1.0	1.0	1.0			
NSF.....	1.0	1.0	1.0			
Title III: Com.....	10.0	10.0	10.0			
Total.....	15.6	17.5	17.9	5.0	4.9	4.7

After reviewing the estimate of costs made by the Government agencies with respect to this legislation, the Committee has concluded that these estimates are reasonable and that the costs incurred in carrying out this legislation will be consistent with those estimates.

DEPARTMENTAL REPORTS

Executive communication No. 284 and the departmental reports on H.R. 4723, on which the hearings were held, are as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., February 10, 1971.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed is a draft of a proposed bill "to regulate the dumping of material in the oceans, coastal, and other waters and for other purposes."

We recommend that the bill be referred to the appropriate committee for consideration and that it be enacted.

The proposed legislation would implement the recommendations of the report "Ocean Dumping—A National Policy." That report, requested by the President in his April 15, 1970, message on waste disposal, was prepared by the Council on Environmental Quality and made public by the President on October 7, 1970.

The report points out that there is a critical need for a national policy on ocean dumping. Many of the wastes now being dumped are heavily concentrated and contain materials that have a number of adverse effects. Many are toxic to human and marine life, deplete oxygen necessary to maintain the marine ecosystem, reduce populations of fish and other economic resources, and damage esthetic values. In some areas, such as the New York Bight, the environmental conditions created by ocean disposal of wastes are serious.

The Council study indicates that the volume of waste materials dumped in the ocean is growing rapidly. Because the capacity of land-based disposal sites is becoming exhausted in some coastal cities, communities are looking to the ocean as a dumping ground for their wastes. Faced with higher water quality standards, industries may also look to the ocean for disposal. The result could be a massive increase in the already growing level of ocean dumping. If this occurs, environmental deterioration will become widespread.

In most cases, feasible and economic land-based disposal methods are available for wastes currently being dumped in the ocean. In many cases, alternatives to ocean dumping can be applied positively for purposes such as land reclamation and recycling to recover valuable waste components.

Current regulatory activities and authorities are not adequate to handle the problem of ocean dumping. States do not exercise extensive control over ocean dumping, and generally their authority extends only within the three-mile territorial sea. The greater part of current dumping occurs outside these waters. The Army Corps of Engineers has regulatory authority over ocean dumping but, again, this is largely confined to the territorial sea. The Corps also has responsibility to facilitate navigation, chiefly by dredging navigation channels. As such, it is in the position of regulating activities over which it also has operational responsibility. The Coast Guard enforces several Federal laws regarding pollution but has no direct authority to regulate ocean dumping. The authority of the Federal Water Pollution Control Act

does not provide for issuance of permits to control ocean dumping. And the Atomic Energy Commission has authority only for disposal of radioactive materials. The Council believes that new legislation authority is necessary.

Taken together, present responsibilities are dispersed and operational agencies exercise responsibility to regulate themselves and entities performing work consistent with their primary mission. It is now necessary that responsibility for ocean dumping be centralized in an agency whose chief role is environmental control. The enclosed bill would give this responsibility to the Environmental Protection Agency.

The proposed legislation would bar the transportation of material for dumping and the actual dumping itself in the oceans, coastal waters and Great Lakes, except as authorized by permits issued by the Administrator of the Environmental Protection Agency. The Administrator would be empowered to ban ocean dumping of certain materials and to designate recommended safe sites for disposal. Transportation for dumping or dumping without a permit would be subject to civil and criminal penalties.

This legislation would provide a comprehensive framework for regulating the transportation and dumping of materials and forestalling pressures to dispose of a vast new influx of wastes in the oceans, coastal waters and the Great Lakes. Placing regulatory authority in the Environmental Protection Agency should strengthen the refinement and implementation of a national policy.

A detailed section-by-section analysis of the bill is enclosed.

The bill is part of the President's environmental program as announced in his Environmental Message of February 8, 1971. It will be administered by the Environmental Protection Agency and was developed in coordination with the Council of Environmental Quality.

The Office of Management and Budget informs me that enactment of this proposal is in accord with the program of the President.

Sincerely yours,

WILLIAM D. RUCKELSHAUS,
Administrator.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED MARINE PROTECTION ACT OF 1971

The title of the proposed act is designated as the "Marine Protection Act of 1971."

Section 2, drawing on the report of the Council on Environmental Quality made public by the President October 7, 1970, makes a finding by the Congress that unregulated dumping of material in the oceans, coastal, and other waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities. It declares a federal policy of regulating dumping of all types of material in the relevant waters and of vigorously limiting the dumping of material which could have an unfavorable effect.

Section 3 defines certain terms used in the proposal. Subsection 3(a) defines the responsible official for implementation of the legisla-

tion as the Administrator of the Environmental Protection Agency (EPA). Subsection 3(b) provides that the proposal applies to the oceans, to gulfs, bays, and other similar salt waters, other coastal areas where the tide ebbs and flows, and to the Great Lakes.

Subsection 3(c) defines material, the transportation for dumping and dumping of which are regulated by the proposal, very broadly as "matter of any kind or description", and then, for illustrative purposes, but without limiting the comprehensive scope of this initial definition, lists specific materials which are included in the general definition. Oil and sewage from vessels, discharges of which are covered by the Federal Water Pollution Control Act, are excluded from the scope of this Act.

Subsection 3(e) defines "person" in such a way that all Federal, State, and foreign governmental organizations, employees, and agents, along with private persons or entities, are included within the prohibition on transportation for dumping or dumping contained in Section 4. Federal organizations, employees, and agents, however, are excepted from the definition of "person" insofar as section 6, providing for penalties, is concerned. Thus, Federal organizations, employees, and agents must comply with the permit and standard-setting provisions of the Act, *i.e.*, they would be required to obtain approval from the Administrator of EPA for the transportation for dumping or the dumping of materials in the relevant waters, but they are not liable for or subject to the penalty provisions.

Subsection 3(f) defines dumping for purposes of the Act as "a disposition of material". Provisos make two important exceptions to this general rule of applicability. The first proviso excepts from the Act's coverage disposition of effluents from any outfall structure or routine discharges of effluents incidental to the propulsion of vessels. Municipal sewage outfalls or industrial waste outfalls come within this proviso. Discharges of effluents other than sewage from outfalls come within the purview of standards set pursuant to the Federal Water Pollution Control Act and also will be subject to the proposed permit program under the Refuse Act (33 U.S.C. § 407). Municipal sewage outfalls also come under the Federal Water Pollution Control Act's standards and also are affected by that Act's assistance programs.

The second proviso could be called the "lobster-pot" proviso. It excepts international placement of devices in the relevant waters or on the submerged lands beneath those waters. Several federal departments and agencies place testing, monitoring, sensing, or surveillance devices on the ocean floor. Under this proviso, the placement of such items or their transportation for placement is not within the coverage of the proposal. Private activities similarly not within the proposal would include placing into the ocean and other pertinent waters lobster traps, off-shore drilling platforms, pipelines, or cables. The latter portion of the proviso ensures that any excepted placement of devices does not include placement of material to produce an effect attributable only to the physical presence of the material in the ocean or other relevant waters. Thus, if car bodies or other similar material were placed in the ocean to serve as a shelter for fish, the effect from placing the car bodies would be attributable only to the physical presence of the car bodies in the ocean, and the placement would constitute a dumping for which a permit would be required under the Act.

Special note should also be made of the fact that "dumping" as defined in subsection 3(f) would not include an activity which has as its primary purpose a result other than "a disposition of material" but which involves the incidental depositing of some debris or other material in the relevant waters. For example, material from missiles and debris from gun projectiles and bombs ultimately come to rest in the protected waters. Such activities are not covered by this Act.

Except where the Administrator has issued a permit for such activity, subsection 4(a) of the proposal prohibits transportation of material from the United States for the purpose of dumping it in the oceans, coastal, and other waters. Similarly, except where a permit has been granted, section 4(b) prohibits dumping of material in that part of such waters which is within the territorial jurisdiction of the United States, or in the Contiguous Zone of the United States when the dumping affects the territorial sea or territory of the United States.

Section 5 places authority to grant transportation and dumping permits in the Administrator of EPA, provides standards for his use in acting on permit applications, and governs the nature of permits which may be issued.

Section 5(a) allows issuance of a permit where the applicant presents information which indicates that the transportation or dumping or both will not unreasonably degrade or unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator is directed to establish and apply criteria for reviewing and evaluating permit applications. In establishing or revising the criteria, the Administrator is required to consider the likely impact of the proposed dumping along with alternative locations and methods of disposal, including those based on land, the probable impact of using such alternatives on considerations affecting the public interest, and the probable impact of issuing or denying permits on such considerations. In establishing or revising criteria, the Administrator is directed to consult with the heads of concerned departments and agencies.

Subsection 5(b) authorizes the Administrator to establish and issue various categories of permits. If he deems such a step to be desirable, the Administrator could set different procedures for handling applications in the various categories. Subsection (b) (2) allows the Administrator to require applicants for permits to provide necessary information. The Administrator could require differing amounts and types of information according to category.

Subsections 5(c) and 5(d) set out the requirements which may be incorporated into permits issued under the authority of subsection 5(a). They also allow the Administrator, as he deems appropriate, to state further requirements and actions, such as charges for permits or reporting on actions taken under a permit.

Subsection 5(e) authorizes the Administrator to grant general permits for the transportation for dumping or dumping of quantities and types of materials which he determines will have a minimal effect on the ocean. This provides flexibility to give general permits for certain types of periodic or continuing activities where the amounts dumped are minimal.

Subsection 5(f) authorizes the Administrator to limit or deny the issuance of permits involving specified substances where he finds that

the substances cannot be dumped consistently with the provisions of and criteria established under subsection 5(a). In such cases the Administrator may also alter or revoke partially or entirely the terms of existing permits.

Subsection 5(g) allows the Administrator to designate recommended sites for dumping specified materials. This would give guidance to applicants and facilitate the Administrator's implementation of the control programs.

Subsection 5(h) establishes a very limited exemption from the prohibition on transportation for dumping or dumping where no permit has been granted. Such transportation or dumping is not prohibited where it is necessary in an emergency to safeguard human life. In such cases reports of the excepted emergency actions must be made to the Administrator.

Section 6 provides for penalties. Under subsection 6(a) the Administrator could assess a civil penalty recoverable in Federal district court, of up to \$50,000 for each violation. Subsection 6(b) establishes, in addition, criminal sanctions for knowing and willful violations. The court could assess a fine of up to \$50,000 or order imprisonment for a period of up to one year, or both. For those cases where violations are of a continuing nature, and for the purpose of imposing civil penalties and criminal fines but not imprisonment, subsection 6(c) makes each day of such a violation a separate offense. Under the provisions of subsection 6(d), the Attorney General is authorized to seek equitable-relief to redress violations. Subsection 6(e) subjects vessels used in violations to *in rem* liability for any civil penalty assessed or criminal fine imposed. Public vessels within the meaning of subsection 13(a) (3) of the Federal Water Pollution Control Act and other public property of a similar nature would not be subject to the remedy authorized by this provision. Subsection 6(f) adds authority for the Administrator to revoke or suspend a permit issued under subsection 6(a) if the permit's provisions have been violated.

Section 7 deals with the relationship of this legislation to other laws. Generally, except as provided in subsections 7(b) and 7(c), it provides that after the Act's effective date, existing licenses, permits, or authorizations would be terminated to the extent they authorize activity covered by this proposal, and that further licenses, permits, or authorizations of a similar nature could not be issued.

Subsection 7(b) maintains present responsibility and authority contained in the Atomic Energy Act of 1954, and provides that the provisions of Sections 4 and 7(a) of this proposal do not apply to actions taken under that Act. However, the AEC must consult with the Administrator before issuing a permit to conduct any activity otherwise regulated by this proposal. Moreover, the AEC must comply with the radioactive-material standards set by the Administrator, and the Administrator is directed to consider the policy expressed in subsection 2(b) of this proposal along with the factors stated in subsections 5(a) (1) and 5(a) (2) in setting such standards for the waters covered by this proposal.

Subsection 7(c) relates to authorities contained in the Rivers and Harbors Act of 1899, respecting dredging, filling, harbor works, and maintenance of navigability. The powers are exercised for the most

part by the Secretary of the Army and the Chief of Engineers. Except for the limited supersession found in subsection 11(c), the Rivers and Harbors Act authorities are not negated or abrogated, nor are existing licenses or permits issued under the Act terminated. Rather in situations where this Act and the Act of 1899 both apply to dumping of material in connection with a dredge, fill or other permit issued by the Corps of Engineers, issuance of the permit requires a certification by the Administrator of EPA that the activity is in conformity with this proposal and any regulations issued under it. The Administrator will not issue separate permits in such cases.

After this Act becomes effective, the Department of the Army's permit program under the Refuse Act, which is administered in close cooperation with EPA on all water quality matters, will continue to regulate the disposition of any effluent covered by the Refuse Act from any outfall structure regardless of the waters into which this disposition occurs, in addition to regulating all depositing of material into other navigable waters of the United States not covered by subsection 4(b) of this Act.

Subsection 7(d) provides for consultation by the Administrator of EPA with the Secretary of the Army in cases where the Administrator finds that the proposed activity may affect navigation or create an artificial island on the Outer Continental Shelf.

Subsection 7(e) saves State or local laws from being preempted by this proposal.

Section 8 allows the Administrator to use, by agreement, resources of other federal agencies, on either a reimbursable or non-reimbursable basis. In subsection 8(b) the Administrator is authorized to delegate responsibility for acting on permit applications to an officer of EPA or, by agreement, to the head of other federal departments or agencies, such as the Commandant of the Coast Guard. Subsection 8(c) directs that surveillance, and other appropriate enforcement activity be conducted by the Secretary of the department in which the Coast Guard is operating.

Section 9 gives the Administrator power to issue appropriate regulations in carrying out the responsibilities and authority conferred by the Act.

Section 10 directs the Secretary of State, in consultation with the Administrator, to seek appropriate international action and cooperation to support the policy of this proposal.

Subsections 11(a) and 11(b) repeal the Supervisory Harbors Act of 1888, as amended (33 U.S.C. §§ 441-451b), and the provision of the Rivers and Harbors Act of 1899 (33 U.S.C. § 418) which preserved the Supervisory Harbors Act from supersession by the 1899 Act. The Supervisory Harbors Act provides a special authority to control transit in and from the harbors of New York, Baltimore, and Hampton Roads, Virginia. This authority has been used to regulate ocean dumping. The proposed Act would replace that authority. A portion of the Act of August 5, 1886 (33 U.S.C. § 407a), which pertains to deposits of debris from mines and stamp works, and which is covered by this bill or the Refuse Act, is also repealed. A provision contained in the Rivers and Harbors Act of 1905 (33 U.S.C. § 419), which has been used to buttress the Corps of Engineers' authority to regulate ocean dumping, is superseded, insofar as it authorizes action that would be

regulated by this proposal. Lastly, section 13 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 407), commonly known as the Refuse Act, is superseded, but only insofar as it applies to dumping of material in the waters covered by subsection 4(b) of this proposal.

Section 12 provides that this proposal shall take effect six months after its enactment and further saves from being affected by this proposal legal actions begun or rights of action accrued prior to the proposal's effective date.

Section 13 contains an authorization for appropriations to carry out the purposes and administration of the proposal.

MARINE PROTECTION ACT OF 1971

A BILL To regulate the dumping of material in the oceans, coastal, and other waters and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That: This Act may be cited as the "Marine Protection Act of 1971."

Section 2. FINDING, POLICY, AND PURPOSE.—(a) Unregulated dumping of material into the oceans, coastal, and other waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) Congress declares that it is the policy of the United States to regulate the dumping of all types of material in the oceans, coastal, and other waters and to prevent or vigorously limit the dumping into the oceans, coastal, and other waters of any material which could adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. To this end, it is the purpose of this Act to regulate the transportation of material from the United States for dumping into the oceans, coastal, and other waters, and the dumping of material by any person from any source if the dumping occurs in waters over which the United States has jurisdiction.

Section 3. DEFINITIONS.—For the purposes of this Act the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Oceans, coastal, and other waters" means oceans, gulfs, bays, salt-water lagoons, salt-water harbors, other coastal waters where the tide ebbs and flows, and the Great Lakes.

(c) "Material" means matter of any kind or description, including, but not limited to, dredge spoil, solid waste, garbage, sewage, sludge, munitions, chemical, biological, and radiological warfare agents, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial waste, *provided*, that it does not mean oil within the meaning of section 11 of the Federal Water Pollution Control Act or sewage from vessels within the meaning of Section 13 of said Act.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, any employee, agent, department, agency, or instrumentality of any

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State or local unit of government, or foreign government, and, except as to the provision of section 6, any employee, agent, department, agency, or instrumentality of the Federal Government.

(f) "Dumping" means a disposition of material, *provided*, that it does not mean a disposition of any effluent from any outfall structure, or a routine discharge of effluent incidental to the propulsion of vessels, and *provided further*, that it does not mean the intentional placement of any device in the oceans, coastal, or other waters or on the submerged land beneath such waters, for the purpose of using such device there to produce an effect attributable to other than its mere physical presence.

(g) "District Court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

SECTION 4. PROHIBITED ACTS.—Except as such transportation or dumping or both may be authorized in a permit issued by the Administrator,

(a) No person shall transport material from the United States for the purpose of dumping it into the oceans, coastal, and other waters, and

(b) No person shall dump material (1) in that part of the oceans, coastal, and other waters which is within the territorial jurisdiction of the United States, or, (2) in a zone contiguous to the territorial sea of the United States, extending to a line 12 nautical miles seaward from the base line of the territorial sea as provided in Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, to the extent that it may affect the territorial sea or the territory of the United States.

SECTION 5. PERMITS.—(a) The Administrator may issue permits to transport material for dumping into the oceans, coastal, and other waters, or to dump material into the waters described in subsection 4(b), or both, where the applicant presents information respecting the proposed activity which in the judgment of the Administrator indicates that such transportation, or dumping, or both will not unreasonably degrade or unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(1) the likely impact of the proposed dumping on human health, welfare, and amenities, and on the marine environment, ecological systems, and economic potentialities, including an assessment of—

(A) the possible persistence or permanence of the effects of the proposed dumping,

(B) the volume and concentration of materials involved, and

(C) the location proposed for the dumping.

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(2) alternative locations and methods of disposal, including land-based alternatives; the probable impact of requiring the use of such locations or methods of disposal on considerations affecting the public interest; and the probable impact of issuing or denying permits on considerations affecting the public interest.

In establishing or revising such criteria, the Administrator shall consult with the Secretaries of Commerce, Interior, State, Defense, Agriculture, Health, Education, and Welfare, and Transportation, the Atomic Energy Commission, and other appropriate Federal, State, and local officials. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary of the Army. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards.

(b) (1) The Administrator may establish and issue various categories of permits, including the general permits described in subsection (e).

(2) The Administrator may require an applicant for a permit under subsection (a) to provide such information as the Administrator may consider necessary to review and evaluate such an application.

(c) Permits issued under subsection (a) may designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; and (5) such other matters as the Administrator deems appropriate.

(d) The Administrator may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued under subsection (a) as he deems appropriate.

(e) Notwithstanding any other provision of this Act, the Administrator may issue general permits for the transportation for dumping, or dumping, or both, of classes of materials which he determines will have a minimal impact, considering the factors stated in subsection (a).

(f) The Administrator may limit or deny the issuance of permits, or may alter or revoke partially or entirely the terms of permits issued by him under this Act, for the transportation for dumping, or the dumping, or both, of specified material, where he finds that such material cannot be dumped consistently with the criteria established pursuant to subsection (a). No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for hearing on such actions as proposed.

(g) The Administrator may, considering the criteria established pursuant to subsection (a), designate recommended sites for the dumping of specified materials.

(h) Nothing in this Act shall prohibit any transportation for dumping or dumping of material where such transportation or dumping is necessary, in an emergency, to safeguard human life. Such transportation or dumping shall be reported to the Administrator within

such times and under such conditions as he may prescribe by regulation.

SECTION 6. PENALTIES.—(a) A person who violates section 4 of this Act, or regulations promulgated under this Act, or a permit issued under this Act by the Administrator shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such violation. Any such civil penalty may be compromised by the Administrator. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) In addition to any action which may be brought under subsection (a), a person who knowingly and willfully violates section 4 of this Act, regulations promulgated under this Act, or a permit issued under this Act by the Administrator shall be fined not more than \$50,000 or imprisoned for not more than one year, or both.

(c) For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense.

(d) The Attorney General or his delegate may bring actions for equitable relief to redress a violation by any person of this Act, regulations promulgated under this Act, and permits issued under this Act by the Administrator, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) A vessel, except a public vessel within the meaning of subsection 13(a) (3) of the Federal Water Pollution Control Act or other public property of a similar nature, used in a violation shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof, *provided*, that no vessel shall be liable unless it shall appear that the owner was at the time of the violation a consenting party or privy to such violation.

(f) If the provisions of any permit issued under subsection (a) of section 5 are violated, the Administrator may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

SECTION 7. RELATIONSHIP TO OTHER LAWS.—(a) After the effective date of this Act, all licenses, permits, or authorizations which have been issued by any officer or employee of the United States under authority of any other provision of law shall be terminated and of no effect to the extent they authorize any activity regulated by this Act. Thereafter, except as hereafter provided, no license, permit, or authority shall be issued by any officer or employee of the United States

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other than the Administrator which would authorize any activity regulated by this Act or the regulations issued hereunder.

(b) Nothing in this Act shall abrogate or negate any existing responsibility or authority contained in the Atomic Energy Act of 1954, as amended, and section 4 and subsection 7(a) of this Act shall not apply to any activity regulated by that Act, *provided*, the Atomic Energy Commission shall consult with the Administrator prior to issuing a permit to conduct any activity which would otherwise be regulated by this Act. In issuing any such permit, the Atomic Energy Commission shall comply with standards set by the Administrator respecting limits on radiation exposures or levels, or concentrations or quantities of radioactive material. In setting such standards for application to the oceans, coastal, and other waters, or for specific portions of such waters, the Administrator shall consider the policy expressed in subsection 2(b) of this Act and the factors stated in subsections 5(a) (1) and 5(a) (2) of this Act.

(c) (1) The provisions of subsection (a) shall not apply to actions taken before or after the effective date of this Act under the authority of the Rivers and Harbors Act of 1899.¹

(2) Except as provided in subsection 11(e), nothing in this Act shall be construed as abrogating or negating any existing responsibility or authority contained in the Rivers and Harbors Act of 1899, *provided*, that after the effective date of this Act, no Federal license or permit shall be issued under the authority of the Rivers and Harbors Act of 1899 to conduct any activity otherwise regulated by section 4 of this Act and the regulations issued hereunder, unless the Administrator has certified that the activity proposed to be conducted is in conformity with the provisions of this Act and with the regulations issued hereunder.

(3) Where a license or permit to conduct an activity has been granted under the authority of subsections (c) (1) and (c) (2) of this section and of the Rivers and Harbors Act of 1899, no separate permit to conduct such activity shall be required under this Act.

(d) Prior to issuing any permit under this Act, where it appears to the Administrator that the disposition of the material to be transported for dumping or to be dumped may affect navigation in the navigable waters of the United States or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary of the Army and no permit shall be issued if the Secretary of the Army determines that navigation will be unreasonably impaired.

(e) Nothing in this Act shall be construed as preempting any State, Federal Territory or Commonwealth, or subdivision thereof from imposing any requirement or liability.

SECTION 8. ENFORCEMENT.—(a) The Administrator may, whenever appropriate, utilize by agreement, the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis.

(b) The Administrator may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of the En-

¹ 33 U.S.C. § 401 et seq.

Environmental Protection Agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping.

SECTION 9 REGULATIONS.—In carrying out the responsibilities and authority conferred by this Act, the Administrator is authorized to issue such regulations as he may deem appropriate.

SECTION 10. INTERNATIONAL COOPERATION.—The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to ensure protection of the marine environment, and may for this purpose, formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations in support of the policy of this Act.

SECTION 11. REPEAL AND SUPPRESSION.—(a) The second proviso to the last paragraph of section 20 of the Act of March 3, 1899 (30 Stat. 1154), as amended,² is repealed.

(b) Sections 1, 2, 3, 4, 5, 6, and 7 of the Act of June 29, 1888 (25 Stat. 209), as amended,³ are repealed.

(c) Section 2 of the Act of August 5, 1886 (24 Stat. 329),⁴ is repealed.

(d) To the extent that it authorizes action regulated by this Act, section 4 of the Act of March 3, 1905 (33 Stat. 1147),⁵ is superseded.

(e) Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152), as amended,⁶ is superseded insofar as it applies to dumping, as defined in subsection 3(f) of this Act, of material in the waters covered by subsection 4(b) of this Act.

SECTION 12. EFFECTIVE DATE AND SAVINGS PROVISION.—(a) This Act shall take effect six months after its enactment.

(b) No legal action begun, or right of action accrued, prior to the effective date of this Act shall be affected by any provision of this Act.

SECTION 13. AUTHORIZATION FOR APPROPRIATION.—There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., April 6, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: AS requested, we submit herewith the views of the Environmental Protection Agency on the following legislative proposals, most of which will be the subject of joint legislative hear-

² 33 U.S.C. § 418.
³ 33 U.S.C. §§ 441-451b.
⁴ 33 U.S.C. § 407a.
⁵ 33 U.S.C. § 419.
⁶ 33 U.S.C. § 407.

ings to be held by the Subcommittee on Oceanography and the Subcommittee on Fisheries and Wildlife Conservation during the week of April 5, 1971: H.R. 285, 336, 337, 548, 549, 805, 807, 808, 983, 1095, 1329, 1381, 1382, 1383, 1661, 1674, 2581, 3662, 4217, 4218, 4247, 4359, 4360, 4361, 4584, 4719, 4723, 5049, 5050, 5239, 5268, 5477, 5705, and 6862.

H.R. 4723 (ALSO 4247, 5239, 5268, 5477, AND 6862)

H.R. 4723, which is the Administration's own ocean dumping proposal, provides that, except as authorized in a permit issued by the Administrator of EPA, no person shall (a) transport "material" from the United States for the purpose of dumping it into "oceans, coastal, and other waters," or (b) dump material in that part of such waters within the territorial jurisdiction of the United States, or in the contiguous zone to the extent that the dumping may affect the territorial sea or the territory of the United States. "Material" is defined to include dredge spoil, solid waste, garbage, sewage sludge, munitions, chemical, biological, and radiological warfare agents, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial waste, but to exclude oil and vessel sewage, discharges of which are regulated by the Federal Water Pollution Control Act. "Oceans, coastal, and other waters" are defined to mean oceans, gulfs, bays, salt-water lagoons, salt-water harbors, other coastal waters where the tide ebbs and flows, and the Great Lakes. The "dumping" to which the bill applies includes any disposition of material other than dispositions of effluent from outfall structures, or routine discharges of effluent incidental to the propulsion of vessels.

The Administrator would be authorized to issue permits to dump materials or to transport them for dumping where in his judgment, based on information supplied by the applicant, such activity will not unreasonable degrade or endanger human health, welfare or amenities, or the the marine environment, ecological systems, or economic potentialities. He would be required to establish criteria for evaluating permit applications, taking into account the likely environmental impact of the proposed dumping, alternative locations and methods of disposal, and the impact on the public interest of either issuing or denying a permit or of requiring an alternative disposal method. In establishing or revising criteria, the Administrator would be required to consult with the heads of concerned departments and agencies. He would be precluded from issuing any permit which would result in a violation of water quality standards. He would be authorized to impose restrictions relating to the type and amount of materials to be dumped, the place of dumping, and the duration of the permit. He would be authorized to limit, deny, alter or revoke permits where he finds that materials cannot be dumped consistently with the criteria established for the issuance of permits. Dumping of materials in an emergency to safeguard human life would be exempted from the requirements of the Act, but would be required to be reported to the Administrator.

The Administrator would be authorized to impose civil penalties of up to \$50,000 per day for violations of the Act or of any regulations or permit issued thereunder. In addition, knowing or willful violations would invite criminal fines of up to \$50,000 per day, imprison-

ment for up to one year, or both. The Attorney General would be authorized to bring actions for equitable relief to redress any such violations, and the Administrator would be authorized to revoke or suspend a violator's permit. All the Act's prohibitions and requirements would be applicable to agencies and employees of the Federal Government, except the remedial provisions described in this paragraph. The bill would require the Coast Guard to conduct surveillance and other appropriate enforcement activity.

The bill has a section which defines its relationship with other laws and with actions taken pursuant to other laws. Generally speaking, existing Federal permits would be terminated upon the Act's effective date to the extent that such permits authorize activity covered by the Act, and further permits of a similar nature could not be issued. However, there would be two exceptions to this general supersession of other laws: (1) the AEC's authorities with respect to radioactive materials under the Atomic Energy Act of 1954 would not be affected (although the AEC would be required to consult with EPA prior to issuing any permit to conduct any activity otherwise regulated by this Act, and to comply with radioactive-material standards set by the Administrator); and (2) except as set forth in the next paragraph, the authorities contained in the Rivers and Harbors Act of 1899, as well as all actions taken pursuant to that Act either before or after the effective date of this proposal, would be preserved. In situations in which this Act and the Act of 1899 both apply to dumping of material in connection with a dredge, fill or other permit issued by the Corps of Engineers, the permit would be issued by the latter only after receiving certification from EPA that the proposed activity is in conformity with this Act.

The bill would supersede the Refuse Act insofar as that Act applies to dumping of materials in waters covered by the bill, and would repeal the Supervisory Harbors Act of 1888, an act which has been used to regulate ocean dumping of materials transported from the harbors of New York, Baltimore, and Hampton Roads, Virginia.

EPA recommends the enactment of H.R. 4723. The bill contains the following major elements, all of which are considered essential to a rational and comprehensive ocean dumping policy:

1. In addition to its application to ocean waters, the bill would apply to the Great Lakes as well as to certain internal waters having characteristics of open ocean waters (salt-water gulfs, bays, lagoons, harbors, etc.).

2. The bill would require permits for two types of activity which are not necessarily related: (a) transportation of materials from the United States for dumping in ocean waters *anywhere*; and (b) dumping of materials—whether transported from the United States or not—in waters covered by the Act which are within the territorial jurisdiction of the United States, or in waters of the contiguous zone where the dumping may affect the territory or territorial sea of the United States. Under this approach, the regulatory authority of the United States is utilized to its fullest extent consistent with established principles of international law.

3. The bill is coordinated with other laws and with water quality management programs carried out pursuant to other laws. The bill would for the most part be inapplicable to internal navigable water-

ways, which are protected by water quality standards established by the States or by joint Federal-State action pursuant to the Federal Water Pollution Control Act, and by the requirements of the Refuse Act of 1899. In order to rationalize the overlap which does exist between this proposal and either the Federal Water Pollution Control Act or the Refuse Act (an overlap which is limited primarily to the Great Lakes and coastal waters out to the three mile limit), the bill provides: (a) that it does not apply to effluents from outfall structures (which are adequately regulated by the Refuse Act and the Federal Water Pollution Control Act);* (b) that the Refuse Act is superseded insofar as it applies to dumping of materials in waters covered by the bill; and (c) that no permit may be issued which would violate water quality standards.

4. Control over dumping is consolidated in EPA, an agency which has as its chief purpose the protection of the environment, and which possesses the research and regulatory capability necessary for developing and carrying out a comprehensive ocean dumping policy.

H.R. 3662

This bill provides that no person may dump waste material (comprehensively defined) into the "ocean waters of the United States," or "transport such material through such waters" (presumably for dumping) without a permit from the Administrator of EPA. "Ocean waters" is defined to mean estuarine areas, coastal waters (out to the three-mile limit), the Great Lakes, and waters above the Outer Continental Shelf (from the three-mile limit to the 200-meter depth contour). The "dumping" to which the bill applies includes disposal of material by any means whatsoever. The Administrator would be authorized to issue permits for dumping where he determines that it will not damage the ecology of the marine environment, taking into account such factors as land-based alternatives and the effect of the dumping on human health and welfare, fisheries resources, and marine ecosystems. Permits would be required to specify restrictions relative to the type and amount of material authorized to be dumped, the location of dumping, and the duration of the permit. The Administrator would not be allowed to issue permits authorizing the dumping of radioactive wastes, toxic industrial wastes, or chemical or biological warfare materials. In the case of permits for the dumping of sewage or industrial wastes, the Administrator would not be allowed to issue a permit (1) after January 1, 1972, unless such wastes had received primary treatment; (2) after January 1, 1974, unless they had also received tertiary treatment; and (3) after January 1, 1976, unless they had also received tertiary treatment. The Administrator would have authority to suspend, revoke, revise or condition permits. The Coast Guard would be required to conduct surveillance and other appropriate enforcement activities. Civil and criminal penalties would be the same as in H.R. 4723, except that one-half of any penalty or fine would be payable to the informer providing the information resulting in such penalty or

*H.R. 5966, an Administration proposal to amend section 10 of the Federal Water Pollution Control Act, would, *inter alia*, authorize the Administrator of EPA to establish water quality standards for the high seas applicable to the discharge of material transported from or originating within the United States. This would enable the Administrator to regulate discharges from ocean outfalls, a category of discharge not covered by H.R. 4723.

fine. Equitable relief to redress violation would be available. The Administrator would be required to conduct the investigation and research with respect to marine ecology necessary to carry out the purposes of the Act; appropriations of \$1 million per year would be authorized for this purpose.

EPA is generally favorable to the provisions of H.R. 3662, which are similar or identical in many respects to the provisions of the Administration's proposal set forth in H.R. 4723. However, EPA has the following major comments or reservations about H. R. 3662:

1. The prohibition against transport through "ocean waters" (waters out to the 200-meter depth contour) without a permit is not linked to the place of origin of the transporting vessel. Insofar as this provision is made applicable to vessels which are not leaving United States ports, it may violate the rights of innocent passage and freedom of the seas under international law.

2. The prohibition against dumping between the 12-mile limit and the 200-meter depth contour, regardless of the place of origin of the material to be dumped, may also raise problems under international law.

3. EPA is opposed to the Act's broad definition of "dumping," which would include continuous discharges from outfall structures which are already subject to regulation under the Federal Water Pollution Control Act, and, in the case of industrial wastes, by the Refuse Act as well. The imposition of further Federal controls over such discharges, in addition to those already provided under the Federal Water Pollution Control Act and the Refuse Act, is duplicative and unnecessary. There is no provision in the bill for supersession of existing, overlapping legal authorities.

4. EPA is opposed to the provisions of the bill which would prohibit the Administrator from issuing permits to dump specified categories of wastes. It is agreed that, generally speaking, ocean disposal of radioactive wastes, toxic industrial wastes, and chemical and biological warfare agents is undesirable and should not be allowed. However, there may be the rare exceptional case, *e.g.*, reactor components from nuclear powered vessels, in which ocean disposal will present a lesser threat to human health, welfare or the environment than land-based disposal. We favor the approach taken in H.R. 4723, which would give the Administrator flexibility in developing an ocean dumping policy which would take account of such special circumstances.

5. EPA is opposed to the provisions of the bill which would prohibit the Administrator from issuing permits to dump sewage or industrial wastes which have received less than a specified level of treatment. This provision appears to be concerned with effluents from municipal and industrial waste treatment plants—a category of discharge apparently within the Act's definition of "dumping." EPA believes that such continuous discharges should continue to be regulated by the Federal Water Pollution Control Act, rather than by a bill concerned primarily with ocean dumping. Furthermore, a requirement of a specified level of treatment for all discharges by a specified date fails to take into account variations in water use designations, the quality or characteristics of the receiving waters, or other factors which bear on the appropriate level of treatment in a given instance. The provisions of the Federal Water Pollution Control Act governing the establish-

ment of water quality standards provide a more flexible and responsive vehicle for the establishment of base levels of treatment.

6. While subsection (e) (2) of the bill provides that "nothing in this section shall be construed as abrogating or negating any existing responsibility or authority contained in the Rivers and Harbors Act of 1899," any outstanding permits authorizing dumping issued under that Act would apparently not survive the enactment of this proposal, in view of subsection (e) (1) which provides for the termination of such permits.

H.R. 4359 (ALSO 4360, 4361)

This bill provides that no citizen of the United States or "other person" may dispose of waste materials (comprehensively defined) into the oceans, coastal waters, or estuarine waters of the United States or into the Great Lakes without a permit from the Administrator of EPA. "Other person" is defined to mean resident officers, directors or managers of foreign partnerships, associations, or corporations doing business in the United States. The Administrator would be authorized to issue permits under such terms as he determines necessary to insure that the dumping will not damage the ecology of the marine environment. The Administrator would not be authorized to issue permits for the dumping of radioactive wastes, toxic industrial wastes, or chemical or biological warfare agents. In the case of permits for the dumping of sewage or industrial wastes, he would not be authorized to issue a permit (1) after January 1, 1972, unless such wastes had received primary treatment; (2) after January 1, 1974, unless they had also received secondary treatment; or (3) after January 1, 1976, unless they had also received tertiary treatment. The Administrator would be authorized to prohibit by regulation the disposal of any waste material which he determines may damage the ecology of the marine environment. The Act would authorize the imposition of criminal fines as follows: fines of \$2,000 to \$10,000 per day of violation for first offenses, and fines of \$10,000 to \$20,000 per day of violation for subsequent offenses. Vessels involved in violations would be forfeited to the United States. The permit provision of the Act would be enforced by EPA, the Secretary of Transportation (Coast Guard), and the Secretary of the Army (Corps of Engineers) under regulations and operational directives jointly agreed to. The Coast Guard would be empowered to stop, search and detain vessels, and district courts would have jurisdiction to restrain violations.

The Secretary of Commerce, acting through NOAA, after consultation with the Secretary of the Interior, EPA, and CEQ, would be directed to designate as marine sanctuaries those areas of the Nation's tidelands, Outer Continental Shelf, seaward areas, and land and waters of the Great Lakes, which the Secretary determines should be preserved or restored for their recreation, conservation, ecologic, or aesthetic values. The Secretary of the Interior would be precluded from issuing or renewing any license for the exploration, mining or removal of any minerals, including oil and gas, from any area designated or under study for possible designation as a marine sanctuary. EPA would be precluded from issuing or renewing permits for dumping in such areas. \$5,000,000 would be authorized to be appropriated for studies in connection with the designation of marine sanctuaries.

TABLE 1

EPA is generally favorable to the provisions of this proposal, with the following major reservations:

1. The bill applies only to dumping activities carried out by United States citizens or other persons doing business in the United States. It would not cover dumping in United States territorial waters, or transportation for dumping from United States ports, carried out by persons lacking these connections with the United States. EPA believes that this gap in coverage is both unnecessary and undesirable.

2. The bill contains a broad definition of "dumping" which would include continuous discharges from outfall structures. EPA is opposed to Federal permit requirements applicable to such discharges for reasons discussed above in connection with H.R. 3662.

3. EPA is opposed to the dumping prohibitions affecting sewage, industrial wastes, radioactive wastes, and chemical and biological warfare agents, for reasons discussed above in connection with H.R. 3662.

4. The bill does not define its relationship with other laws dealing with Federal permits for dumping, notably the Rivers and Harbors Act of 1899, which includes the Refuse Act. Presumably the overlapping requirements of the Refuse Act would remain in effect in areas in which both Acts apply. The bill states that "other provisions of law which are in conflict with this Act are hereby repealed," but this provision does not solve the problem of duplicative, overlapping requirements.

5. The bill does not provide for administratively as well as judicially imposed penalties, as both H.R. 4723 and H.R. 3662 do, but only for judicial fines. EPA favors the approach taken in H.R. 4723 and H.R. 3662 since it would foster rapid adjudication of violations by administrative personnel having the necessary expertise to deal with the problem.

6. The establishment of "marine sanctuaries" is beyond the scope of the Administration's bill, which deals entirely with the control of ocean dumping. However, EPA is completely in accord that certain critical marine areas should be protected from dumping, and would have this objective in mind in administering H.R. 4723, which provides ample authority to ban dumping in certain areas. The relationship of the marine sanctuaries proposal to the land use programs proposed by the Administration in H.R. 4332 should be examined. Under H.R. 4332, the Secretary of the Interior would be authorized to make grants to States to assist them in developing land use programs which would include State controls over the use and development of "areas of critical environmental concern," defined in the bill to include coastal zones, estuaries, and the Great Lakes.

H.R. 1661 (ALSO 5049, 5050)

This bill provides that no owner or master of a vessel may load or permit the loading of any waste (comprehensively defined) while in any port of the United States, if such waste is to be discharged in "ocean waters," unless such owner or master first obtains a loading permit from the Administrator of EPA and notifies the Coast Guard. "Ocean waters" is defined to mean "any estuarine area, coastal waters, Great Lakes, territorial waters, and the high seas adjacent to the territorial waters." The Administrator would be required to issue loading

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permits if he determines that dumping of the wastes into ocean waters will not damage the ecology of the marine environment. He would be precluded from issuing any permit for the discharge of any waste between the Continental Shelf and the coast of the United States (meaning, it would appear, within the three-mile territorial sea). The Administrator would have authority to ban loading, transportation and dumping of matter deemed damaging to the marine environment or to human health or welfare. The Coast Guard would be required to conduct surveillance and other appropriate enforcement activity. The bill would authorize administratively imposed civil penalties as follows: up to \$50,000 for the first violation, and up to \$100,000 for each subsequent violation. Upon failure of an offending party to pay a penalty, the Administrator would be authorized to request the Attorney General to commence a district court action for appropriate relief. Outstanding Federal permits authorizing any activities to which the bill applies would be terminated as of the bill's effective date.

EPA is generally favorable to H.R. 1661, with the following major reservations:

1. It would not apply, as H.R. 4723 would, to dumping of material in the U.S. territorial sea of contiguous zone which is not loaded on vessels in United States ports.

2. The definition of "ocean waters" may give some problems. The meaning of "territorial waters" is not clear, although the term is probably intended to be limited to offshore territorial waters, since inclusion of internal territorial waters would conflict with the generic "ocean waters." The scope of "high seas adjacent to the territorial waters" is also not clear.

3. EPA has reservations about the provision which would prohibit the issuance of permits for the disposal of wastes in the United States territorial sea. The provision is unnecessary since under H.R. 4723 and similar bills the Administrator would have authority to prohibit dumping in such waters where appropriate, and very little dumping is carried out in such waters in any event. Furthermore, some carefully planned and controlled disposal of waste materials in these waters may be desirable, *e.g.*, the sinking of car bodies or other similar material to serve as a shelter for fish.

H.R. 1383; H.R. 805 (ALSO 807, 808, 1329, 2581, AND 5705)

Under H.R. 1383, the Secretary of the Interior, acting through the Fish and Wildlife Service, would be required to establish standards applicable to the deposit or discharge into the "coastal waters" of the United States of all industrial wastes, sludge, and spoil, and all other materials that might be harmful to the wildlife or ecology of these waters. These standards would require any person, before discharging such materials into such waters, to present sufficient evidence to sustain a burden of proof that such materials will not endanger the natural environment and ecology of such waters. These standards would be required to be adopted and enforced by any agency of Federal or State government that issues licenses for disposal of materials in coastal waters. The States would be authorized to establish more stringent standards provided they contain adequate procedures for

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enforcement. District courts would have jurisdiction to restrain violations. Violators of standards would be liable to civil penalties of not more than \$10,000 or less than \$5,000 per day of violation. Outstanding Federal permits would be terminated as of the effective date of the proposal.

H.R. 805 is essentially the same as H.R. 1383, except (1) the standards would be established jointly by the Secretary of the Interior and the Administrator of EPA; (2) the standards would be applicable to "ocean, coastal, and other waters" rather than simply to "coastal water," and (3) EPA rather than the Interior Department would be the agency charged with administrative responsibilities. In H.R. 805, "ocean, coastal, and other waters" are defined in the same way as these words are defined in H.R. 4723, except that the bill's application to ocean waters would appear to be limited to the territorial sea and the contiguous zone. The term "coastal waters" as used in H.R. 1383 is not defined. The words "deposit or discharge" as used in both bills would appear to embrace continuous discharges as well as intermittent dumping.

EPA is opposed to the enactment of these bills because they overlap existing law. Water quality standards have already been established under the Federal Water Pollution Control Act for all of the waters to which these bills relate except the waters of the contiguous zone, a gap which will be closed if H.R. 5966, an Administration proposal to amend the Federal Water Pollution Control Act, is enacted. H.R. 5966 would also make these standards enforceable by civil penalty and injunction. Under H.R. 4723, the Administration's ocean dumping proposal, the Administrator of EPA would be precluded from issuing permits which violate water quality standards, and under the Refuse Act Permit Program, the Corps of Engineers will not issue permits which violate or permit a violation of these standards. Moreover, H.R. 1383 and 805, by calling for Federal standards which shall govern unless the States adopt more stringent standards, are inconsistent with the established policy of the Federal Water Pollution Control Act, which places the primary responsibility for the establishment of water quality standards on the States.

H.R. 285 AND H.R. 983

H.R. 285 would require the Secretary of the Interior, acting through the Fish and Wildlife Service, after a two-year study, to designate those portions of the navigable waters of the United States and of the waters above the Outer Continental Shelf into which he determines that sewage, sludge, spoil and other waste can be safely discharged (in terms of ecological and environmental values). After making such designations, the Secretary of the Interior would be required to establish standards applicable to the discharge of material within such designated areas. The purpose of the standards would be to insure that no damage to wildlife, or pollution of United States navigable waters, results from such discharges. States would be authorized to establish standards of equal or greater stringency provided they contain adequate procedures for enforcement. Discharges of sewage, sludge, spoil or other waste into any waters within the jurisdiction of the United States which are not within a designated discharge area

would invite civil penalties of up to \$10,000 per offense. Violators of discharge standards applicable to discharge areas would be subject to comparable civil penalties. District courts would have jurisdiction to restrain violations. Outstanding Federal discharge permits would be nullified on the effective date of the proposal. Thereafter, no Federal permits could be issued which would authorize any activity prohibited by this bill.

H.R. 983 is the same as H.R. 285 except that (1) designation of discharge areas would be carried out jointly by Interior and EPA; (2) standard setting and enforcement would be carried out by EPA rather than by Interior; and (3) the maximum authorized civil penalty per violation would be \$40,000 rather than \$10,000. Both bills define covered "discharges" to include "any spilling, leaking, pumping, pouring, emitting, emptying, or dumping."

H.R. 285 and 983 are similar to H.R. 1383 and 805, discussed above, except that they would be applicable to *all* United States navigable waters, and would call for the designation of safe discharge areas as well as for the establishment of discharge standards. EPA is opposed to the enactment of these bills for the same reasons it is opposed to enactment of H.R. 1363 and 805: basically, the fact that they are designed to accomplish, in a somewhat different way, what is already being accomplished under the Federal Water Pollution Control Act. The overlap is even greater than in the case of H.R. 1383 and 805, in view of the broad application to all "navigable" waters. Interstate navigable waters are already subject to the standard-setting provisions of the Federal Water Pollution Control Act, and intrastate navigable waters will be brought within the coverage of that Act if the Administration's H.R. 5966 is enacted.

H.R. 1095

H.R. 1095 would require the Secretary of the Interior, acting through the Fish and Wildlife Service, after a one-year study, to designate those portions of the navigable waters of the United States and those portions of the waters above the Outer Continental Shelf into which he determines that sewage, sludge, spoil, landfill, heated effluents, or other wastes or substances *cannot* be safely discharged, such areas to be known as "marine sanctuaries." Persons who discharge (defined to include spilling, leaking, pouring, etc.) any wastes or substances into such designated waters would be subject to fines of up to \$10,000 per offense. All Federal permits would be terminated to the extent that they authorize any discharge into such areas, and no new Federal permits authorizing such dumping could be issued.

The Secretary of the Interior would be required to establish standards applicable to the discharge of all wastes and substances into areas not so designated as marine sanctuaries. Such standards would be for the purpose of insuring against damage to marine life or wildlife, or pollution of United States navigable waters. The standards would be required to provide that no sewage or industrial waste may be discharged: (1) after January 1, 1973, unless it has received at least primary treatment or its equivalent; (2) after January 1, 1975, unless it has received at least secondary treatment or its equivalent; and (3) after January 1, 1977, unless it has received at least tertiary treatment or its equivalent. States would be authorized to establish standards of

equal or greater stringency provided they contain adequate provisions for enforcement. Dischargers of any waste or substance in violation of the established standards would be subject to a civil penalty of not more than \$10,000 per day of violation. All Federal permits would be terminated to the extent they authorize discharges which violate such standards. District courts would have authority to restrain violations.

The Secretary of Defense would be required to make a complete inventory of all existing munitions, chemical, biological, and radiological warfare agents, and other military materials, the disposition of which may present a danger to man, the environment, or to fish and wildlife, and to determine the date beyond which each such item cannot be safely retained. He would also be required to prepare a plan for the demilitarization, detoxification or decontamination of such military materials. After the date of enactment of the bill, he would be required to determine such disposition dates and to prepare such disposition plans for any new military materials prior to acquiring them. After the date of enactment of the bill, all disposal of such military materials into any navigable or coastal waters of the United States, or into any international waters, would be prohibited.

EPA has the following comments with respect to this bill:

1. The establishment of "marine sanctuaries" has been discussed above in connection with H.R. 4359.
2. The establishment of discharge standards has been discussed above in connection with H.R. 1383, 805, 285, and 983.
3. The prohibition against the discharge of sewage or industrial wastes which have received less than a specified level of treatment has been discussed above in connection with H.R. 3662.
4. EPA does not believe that a legislated ban on the dumping of military materials is necessary. Recent policy declarations by the Department of Defense indicate that an effective ban is already in effect or is being implemented. Furthermore, as already discussed in connection with H.R. 3662, there may be the rare exceptional case in which ocean disposal will present a lesser threat to human health, welfare or the environment than land-based disposal.

H.R. 337 (ALSO 549, 1381); H.R. 4584; H.R. 4217 (ALSO 4218, 4719)

H.R. 337 would prohibit any person from discharging, into any of the navigable waters of the United States or into international waters, any munition, or any chemical, biological, or radiological warfare agent, or any other military material, except in accordance with a certificate issued by the Council on Environmental Quality establishing the terms, conditions and limitations of such disposal. H.R. 4584 is the same as H.R. 337, except that the certificate would be issued jointly by EPA and NOAA rather than by CEQ. H.R. 4217 is the same as H.R. 4584, except that the certifying authority would be EPA exclusively, and the bill's requirements would apply not only to military materials but also to "any other refuse matter of any kind or description whatsoever."

EPA has the following comments on these bills:

1. All of them, applying to discharges by any person into international waters, without regard to citizenship or point of origin

of the discharged material, may raise problems under international law.

2. EPA prefers the comprehensive approach taken in H.R. 4723, which would apply a dumping permit requirement to a broad range of materials, including military materials, to the *ad hoc* approach of H.R. 337 and H.R. 4584.

3. CEQ serves an advisory rather than a regulatory function and should not be the certifying authority as provided in H.R. 337. CEQ supports H.R. 4723, under which such regulatory authority would be vested in EPA.

4. With respect to discharges into navigable waters, H.R. 4217 duplicates the requirements of the Refuse Act of 1899, which requires a permit from the Corps of Engineers for the discharge of any refuse matter into navigable waters other than refuse flowing from streets and sewers in a liquid state. Discharges not covered by the Refuse Act are subject to control under the Federal Water Pollution Control Act, and proposed amendments thereto.

H.R. 336 (ALSO 548, 1382, 1674)

This bill requires the CEQ to make an investigation and study of all aspects of existing national policy with respect to the discharge of materials into the Atlantic and Pacific Oceans, the Gulf of Mexico, and other waters within the territorial sea or contiguous zone of the United States, and to report to the President and Congress the results thereof, and its recommendations for a national ocean dumping policy, including any treaties, agreements or legislation necessary in connection therewith. EPA is of the opinion that CEQ has already performed this task, as evidenced by its report entitled "Ocean Dumping—A National Policy" submitted to the President in October, 1970. The Administration's ocean dumping bill, H.R. 4723, is based on the recommendations contained in that report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of H.R. 4723 would be in accord with the program of the President.

Sincerely yours,

WILLIAM D. RUCKELSHAUS,
Administrator.

DEPARTMENT OF THE ARMY,
Washington, D.C., April 7, 1971.

HON. EDWARD A. GARMATZ,
*Chairman, Merchant Marine and Fisheries Committee,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H.R.'s 285, 336, 337, 548, 549, 805, 983, 1095, 1383, 1661, 3662, 4217, 4584 and 5050, 92nd Congress, bills concerning the discharge of military or other material into international waters or waters of the United States, and the transportation of that material for disposal into international waters. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on these bills.

The purpose of the bills is to prohibit unregulated dumping into the oceans and other waters. The Department of the Army on behalf of the Department of Defense is deeply concerned about the adverse ecological and environmental effects associated with the discharge of wastes and other materials into the navigable, coastal, and ocean waters of the United States. Each of these bills addresses some facet of this area of concern. We are concerned, however, that certain of these bills could unnecessarily prohibit some important activities not necessarily harmful to the marine environment. We are especially concerned that the prohibitive features of certain of these bills could be construed as an attempt to preclude operation of U.S. nuclear powered warships, including the strategic deterrent Fleet Ballistic Missile Submarine force. Such a result would be untenable to the security of the United States.

The Department of the Army on behalf of the Department of Defense believes that the Administration's bill, H.R. 4723, introduced by you on February 22, 1971, to the 92nd Congress, realistically and comprehensively provides for the intent expressed in the proposed bills cited in the first paragraph, above, with respect to preventing unregulated dumping of harmful substances into estuarine areas.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

STANLEY R. RESOR,
Secretary of the Army.

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C. April 7, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. GARMATZ: The Atomic Energy Commission is pleased to reply to your requests for our views on H.R. 805, H.R. 1383, H.R. 1661, H.R. 3662, H.R. 4247, H.R. 4359, H.R. 4723, and H.R. 5050, bills relating to waste discharges in the oceans and coastal or other waters.

H.R. 805 and H.R. 1383: These bills are similar. H.R. 805 would require the Administrator of EPA and the Secretary of Interior, in consultation with the Secretary of the Army, to establish standards for the discharge into the oceans, coastal waters, and other waters of the United States of all materials "that might be harmful to the wildlife or wildlife resources or to the ecology of these waters." Such standards would have to be adopted and enforced by, and would be applicable to, Federal and State agencies. Under H.R. 1383 the Secretary of Interior, rather than the Administrator of EPA, would establish the standards. Each state would be permitted to establish standards more stringent than the Federal standards with respect to activities within its jurisdiction.

H.R. 1661 and H.R. 5050: These bills, which are identical, would impose a specific prohibition on an owner or master of a vessel, in regard to the loading of any waste on a vessel, while it is in a United States port, if the material is to be dumped in territorial or international waters. An authorizing permit would first have to be obtained from the Administrator of the Environment Protection Agency; such authorization would be based on the Administrator's determination that the discharge would not damage the marine environment or human health and welfare. The Administrator would be precluded from authorizing any discharges of wastes between the Continental Shelf and the coast of the United States. The owner or master of the vessel would also be required to notify the Coast Guard of the exact location where the authorized dumping would be effected.

H.R. 3662 and H.R. 4359: These similar bills would prohibit any person from dumping waste material into the coastal or ocean waters of the United States, including the Great Lakes and estuarine areas, without first obtaining a permit from the Administrator of EPA. The Administrator could issue the permit if he determined that the discharge would not damage the ecology of the marine environment; the Administrator would be obliged to take into account a number of factors specified in the bills, including the effect of the dumping on human health and welfare. No permit could be issued for the disposal of certain specified wastes, including "radioactive wastes". Sections 9(a) of H.R. 4359 (not contained in H.R. 3662) would require that the Secretary of Commerce designate portions of the waters encompassed by the bill, as well as adjacent land areas, as marine sanctuaries. The Administrator of EPA would be prohibited from issuing or renewing any permit for the disposal of any wastes "in any area designated or under study for possible designation as a marine sanctuary."

H.R. 4247 and H.R. 4723: These identical bills, which are favored by the Administration, would (1) carefully regulate the transportation of materials from the United States for the purpose of disposal in the oceans and coastal and other waters of the United States, and (2) dumping in waters over which the United States has jurisdiction. The term "dumping" and other key words in these bills are clearly defined. Both transportation and dumping would be prohibited unless the Administrator of EPA issues an authorizing permit. The Administrator may issue such permits "where the applicant presents information respecting the proposed activity which in the judgment of the Administrator indicates that such transportation, or dumping, or both will not unreasonably degrade or unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities."

In reviewing permit applications the Administrator would be guided by criteria to be established by him in consultation with certain named Federal agencies, including the Atomic Energy Commission, as well as "other appropriate Federal, State, and local officials."

The Administrator would have very broad authority with respect to types and scopes of permits, but no permit could be issued for dumping that would violate applicable water quality standards. The bills provide that transportation or dumping without a permit would be permitted in emergency situations where necessary to safeguard hu-

man life; in such excepted instances, reports must be furnished to the Administrator "within such time and under such conditions as he may prescribe by regulation."

Under the caption "Relationship to Other Laws" the bills provide, among other things, that:

"(b) Nothing in this Act shall abrogate or negate any existing responsibility or authority contained in the Atomic Energy Act of 1954, as amended, and section 4 and subsection 7(a) of this Act shall not apply to any activity regulated by that Act: *Provided*, The Atomic Energy Commission shall consult with the Administrator prior to issuing a permit to conduct any activity which would otherwise be regulated by this Act. In issuing any such permit, the Atomic Energy Commission shall comply with standards set by the Administrator respecting limits on radiation exposures or levels, or concentrations or quantities of radioactive material. In setting such standards for application to the oceans, coastal, and other waters, or for specific portions of such waters, the Administrator shall consider the policy expressed in subsection 2(b) of this Act and the factors stated in subsections 5(a)(1) and 5(a)(2) of this Act."

This provision recognizes that the Atomic Energy Act of 1954, as amended, vests the Atomic Energy Commission with regulatory authority over the construction and operation of nuclear facilities and the possession and use of certain defined nuclear materials, including the disposal of all radioactive materials, except radioactive material produced in accelerators and naturally occurring radium and its daughters.

AEC has not permitted ocean disposal of high-level radioactive wastes from fuel reprocessing operations. Although the disposal of low-level liquid wastes from such facilities as nuclear power plants and the dumping of solid, packaged radioactive wastes into the ocean have been permitted, AEC has strictly controlled and limited the quantities and types of wastes disposed in this manner. In fact, AEC itself has made no sea disposals during the past eight years and has not issued any licenses for this purpose since 1960. The four existing licenses have seldom been used.

The discharge of radioactive effluents from AEC licensed facilities is subject to a comprehensive system of Federal regulations and licensing requirements, which are contained in 10 CFR Parts 20 and 50 of the Commission's regulations. These regulations are based upon recommendations which have been made by the Federal Radiation Council. Pursuant to Reorganization Plan No. 3 of 1970 (effective December 2, 1970) the functions of the FRC were transferred to the Environmental Protection Agency, which now has the responsibility to set standards for the protection of the general environment from radioactive materials. As with the disposal of radioactive wastes, the AEC has exercised its authority over the discharge of radioactive effluents by strictly controlling and limiting such releases. We do not believe that experience has shown any need for an additional system of control over such discharges or disposal.

Unlike the other bills mentioned above, H.R. 4247 and H.R. 4723 avoid the problem of dual regulation in the atomic energy field. Under these bills AEC would be required to consult with the Administrator

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before issuing a permit for any activity which would otherwise be within the scope of the statute, and would also be required to comply with the standards set by the Administrator respecting limits on radiation exposures or levels, or concentrations or quantities of radioactive material.

In our view, the proposed legislation embodied in H.R. 4247 and H.R. 4723 would provide for more comprehensive and effective regulation of the discharge of materials into the marine environment than would the other bills. Moreover, we fear that enactment of any of the other bills could give rise to serious problems which are avoided in the careful draftsmanship of the proposed legislation of the President.

We recommend that favorable consideration be given to enactment of the text of H.R. 4247 and H.R. 4723. We believe that the other bills, which cover many of the same areas as H.R. 4247 and H.R. 4723, are not as well drawn as those two bills, and should not be enacted into law in their present form.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Cordially,

GLENN T. SEABORG,
Chairman.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., April 21, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your request for comment on H.R. 4359, a bill "To amend the Act of August 3, 1968 (82 Stat. 625), to protect the ecology of estuarine areas by regulating dumping of waste materials, to authorize the establishment of a system of marine sanctuaries, and for other purposes," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The purpose of the bill is to amend the Act of August 3, 1968 (82 Stat. 625), to provide for the protection of the ecology of estuarine areas by regulating the dumping of waste materials, the authorization of the establishment of a system of marine sanctuaries, and the implementation of these general goals.

The Department of the Navy, on behalf of the Department of Defense, is deeply concerned about the adverse ecological and environmental effects associated with the discharge of wastes and other materials into the oceans, coastal, and other waters. We are also concerned, however, that certain features of H.R. 4359 could unnecessarily prohibit some important activities not necessarily harmful to the marine environment. We are especially concerned that the proposed new section 7(c) (1) to the Act of August 3, 1968, as set forth in section 3 of H.R. 4359, could be construed to preclude operation of Fleet Ballistic Missile Submarine force. Such a result would be untenable to the security of the United States.

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We are also concerned that the bill could be construed to apply to areas over which the United States does not have jurisdiction. Under international law a state has complete jurisdiction over its territorial seas, subject only to the right of innocent passage. The United States' territorial waters extend three miles seaward from the mean low-water line. Beyond this territorial sea the United States has sovereign rights for the purpose of exploring and exploiting the natural resources of its continental shelf and also has the right to enforce its customs, fiscal, immigration or sanitary regulations within a zone of the high seas contiguous to its territorial sea. (Article 2, 1958 Geneva Convention on the Continental Shelf, TIAS 5578; Article 24, 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, TIAS 5639.) Under the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone the extent of the contiguous zone must be no more than 12 nautical miles. In addition, customary international practice presently recognizes the coastal state's right to control fishing within 12 miles of its coast. In consonance with the recognized international practice, a 9-mile fisheries zone contiguous to the United States 3-mile territorial sea was established by the United States in 1966 (Public Law 89-658; 16 U.S.C. 1091-1094).

As presently formulated, H.R. 4359 would provide for unilateral United States regulation and control of activities well beyond these specialized jurisdictional rights recognized under international law. Such unilateral claims which go beyond the confines of recognized international law, although couched in terms of domestic legislation, can and frequently are used as a basis for exaggerated offshore jurisdictional claims by other nations. Such unwarranted extensions of offshore jurisdiction erode the principle of freedom of the high seas which is essential for naval mobility.

H.R. 4359 would authorize the Secretary of Commerce to designate as marine sanctuaries those areas which the Secretary determines should be preserved or restored. The exercise of this authority conceivably could restrict or prohibit research, development, testing, survey work, or training exercises conducted by, or under the sponsorship of, the Department of Defense, without prior coordination with the Department of Defense.

The Department of the Navy, on behalf of the Department of Defense, believes that the Administration's well drafted, comprehensive bill, H.R. 4723, introduced by you on February 22, 1971, to the 92nd Congress, realistically provides for the intent expressed in H.R. 4359 with respect to preventing harmful, unregulated dumping into the oceans, coastal, and other waters. The Department of the Navy, on behalf of the Department of Defense, therefore favors H.R. 4723, in lieu of H.R. 4359.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

For the Secretary of the Navy, *LEGISLATIVE Y-400 (2)*

Sincerely yours,

LANDO W. ZECH, Jr.,
Captain, U.S. Navy,
Deputy Chief.

DEPARTMENT OF STATE,
Washington, D.C., April 7, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of February 26, 1971, enclosing for the Department's comments copies of H.R. 4247 and H.R. 4723, bills cited as the "Marine Protection Act of 1971".

The Department's views on this legislation, which we fully support, are set forth in the prepared statement delivered to your Committee in advance of the hearings today at which the Department's Legal Adviser, John R. Stevenson, is testifying on this general subject.

The Department recommends favorable action on this legislation which the Office of Management and Budget advises is in accord with the program of the President.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 19, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for reports on H.R. 4247 and H.R. 4723, bills "To regulate the dumping of material in the oceans, coastal, and other waters and for other purposes."

This Department supports the enactment of H.R. 4247 and H.R. 4723 which carry out the recommendations set forth by the President in his February 8, 1971, message on the environment.

Under these bills, the Administrator of the Environmental Protection Agency would be authorized to issue permits for dumping materials into oceans, coastal, and other waters when, in his judgment, such dumping will not unreasonably endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

The Administrator, EPA, would be directed to establish criteria for evaluating permit applications on the basis of their likely environmental impact including (1) possible persistence of the effects of the proposed dumping, (2) volume and concentration of materials involved, and (3) the location proposed for dumping.

Of especial interest to this Department is the provision (Sec. 5(a)2) that the Administrator, EPA, consider "alternate locations and methods of disposal including land-based alternatives. . . ." Since most of the land in the United States is rural land, used for farming or

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forestry, this Department is concerned with any land-based alternatives which might be considered. The Department of Agriculture has information and expertise relevant to the suitability of various land sites for disposal of solids, either as sanitary landfills or through methods by which many solids may be beneficially incorporated in the soil. We wish to point out that the bills very appropriately provide that, in establishing or revising criteria against which dumping permit applications would be approved or denied, the Administrator, EPA, will consult with this Department, along with several other interested Federal agencies.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 9, 1971.

HON. EDWARD A. GARMATZ,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H.R. 4247 and H.R. 4723, 92d Congress, similar bills "To regulate the dumping of material in the oceans, coastal, and other waters and for other purposes".

The purpose of the bills is stated in their titles. If enacted, the bills would make the Administrator of the Environmental Protection Agency responsible for establishing appropriate regulations for the application of the environmental standards contained in the proposals. Any agency or person would have to obtain a permit from the Administrator before transporting material for dumping or before dumping materials in the protected areas. There are certain exceptions to this latter requirement for routine operation of vessels and for intentional placement of devices in the waters, if such placement is for a purpose other than disposal.

The bills were introduced as a result of a proposal submitted to the Congress in connection with the President's environmental message of February 8, 1971. The Department of Defense supports the bills and recommends enactment.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there would be no objection to the presentation of this report for the consideration of the Committee, and that the enactment of H.R. 4247 or H.R. 4723 would be in accord with the program of the President.

Sincerely yours,

J. FRED BUZHARDT.

COMBINED REPORT ON H.R. 285, H.R. 805, H.R. 983, AND H.R. 1095,
92D CONGRESS, RELATED BILLS TO AMEND THE FISH AND WILDLIFE
COORDINATION ACT

FEDERAL POWER COMMISSION,
Washington, D.C., April 16, 1971.

HON. EDWARD A. GARMATZ,
*Chairman, Committee on Merchant Marine and Fisheries, House of
Representatives, Longworth House Office Building, Washing-
ton, D.C.*

DEAR MR. CHAIRMAN: In response to your requests of February 9
and February 17, 1971, we enclose 20 copies of the report of the Fed-
eral Power Commission on the subject bills.

The Office of Management and Budget advises there is no objection
to the presentation of this report and, that enactment of H.R. 4723
would be in accord with the program of the President.

Sincerely,

JOHN N. NASSIKAS,
Chairman.

FEDERAL POWER COMMISSION

REPORT ON RELATED BILLS, H.R. 285, H.R. 805, H.R. 983 AND
H.R. 1095—92D CONGRESS

H.R. 285

A BILL To amend the Fish and Wildlife Coordination Act to pro-
vide additional protection to marine and wildlife ecology by re-
quiring the designation of certain water and submerged lands areas
where the depositing of certain waste materials will be permitted,
to authorize the establishment of standards with respect to such
deposits, and for other purposes.

H.R. 805

A BILL To amend the Fish and Wildlife Coordination Act to pro-
vide additional protection to marine and wildlife ecology by pro-
viding for orderly regulation of dumping in the ocean, coastal, and
other waters of the United States.

H.R. 983

A BILL To amend the Fish and Wildlife Coordination Act to pro-
vide additional protection to marine and wildlife ecology by requir-
ing the designation of certain water and submerged lands areas
where the depositing of certain waste materials will be permitted,
to authorize the establishment of standards with respect to such
deposits, and for other purposes.

H.R. 1095

A BILL To amend the Fish and Wildlife Coordination Act to pro-
vide additional protection to marine and wildlife ecology by re-

quiring the designation of certain water and submerged land areas where the depositing of certain waste materials is prohibited, to require the establishment of standards with respect to such deposits in all other areas, and for other purposes.

H.R. 285 would amend the Fish and Wildlife Coordination Act to provide additional protection to the ecology of the Nation's marine and fresh waters by authorizing the Secretary of the Interior acting through the Fish and Wildlife Service to designate those portions of the navigable waters of the United States, of the waters above the Outer Continental Shelf, and of the submerged lands relating to those waters, on which sewage, sludge, spoil or other waste can be safely discharged. H.R. 285 would direct the Secretary of the Interior to establish standards applicable to the discharge of material within designated discharge areas "for the purpose of insuring that no damage to, or loss of, any wildlife or wildlife resources or pollution of the navigable waters of the United States will result from such activity." The bill would also permit the States to establish more stringent discharge standards. Initial designation of discharge areas would be delayed for two years after enactment of the bill pending completion of an investigation and study of potential discharge areas by the Secretary of the Interior in cooperation with the Secretary of the Army acting through the Chief of Engineers. H.R. 285 contains enforcement provisions (subsections (g) and (k) and provides civil penalties for discharge of waste in undesignated areas and for violation of applicable discharge standards (subsection (i)). Subsection (j) provides that:

"(j) Upon the designation of waters or submerged lands under subsection (a) of this section, all licenses, permits, or authorizations which have been issued by any officer or employee of the United States under authority of any other provision of law shall be terminated and of no effect to the extent they authorize any activity prohibited by subsection (i) of this section. Thereafter no license, permit, or authority shall be issued by any officer or employee of the United States which would authorize any activity prohibited by subsection (i) of this section."

H.R. 805 would require the Administrator of the Environmental Protection Agency and the Secretary of the Interior (acting through the United States Fish and Wildlife Service) in consultation with the Secretary of the Army (acting through the Chief of Engineers), to establish standards for the discharge of waste:

"... for the purpose of insuring that no damage to the natural environment and ecology including but not limited to marine and wildlife ecology of the ocean, coastal, and other waters of the United States, will result from any such activity. . . ."

H.R. 805 would also permit the imposition of more stringent state standards.

H.R. 805 does not provide for the designation of areas within which waste may be safely deposited. Instead, the bill would require any person, before depositing or discharging industrial wastes, sludge, spoil or other materials into the ocean, coastal, or other waters of the United States, to "present sufficient evidence to sustain a burden of proof that such materials in the location in which they are to be deposited will not endanger the natural environmental and ecology

of these waters and to meet such additional requirements as the Administrator may deem necessary for the orderly regulation of such activity." The bill further provides in subsection (d) that the standards established "shall be applicable to all of the departments, agencies, and instrumentalities of the Federal Government, to the States and their agencies, including any person having any license, permit, or other authorization from such State or agency for any such activity with respect to any such ocean, coastal, and other waters." The civil penalties set forth under H.R. 805 are less stringent than those contained in H.R. 285 and apply only to violations of discharge standards. Subsection (i) of H.R. 805 is much more stringent than the parallel subsection (j) of H.R. 285 *ipso facto* in that it provides:

"(i) Upon the effective date of this section all licenses, permits, or authorizations which have been issued by any officer or employee of the United States under authority of any other provision of law shall be terminated."

Unlike the parallel provisions¹ in H.R. 285, H.R. 983 and H.R. 1095, subsection (f) of H.R. 805, which relates to recordkeeping and reporting, does not provide for confidential treatment of information relating to trade secrets.

H.R. 983 is substantially the same as H.R. 285, except for the following differences. Under H.R. 983, the Secretary of the Interior, acting through the Fish and Wildlife Service, and the Administrator of the Environmental Protection Agency would have joint responsibility for designating discharge areas. However, H.R. 983 would give the Administrator of the Environmental Protection Agency, instead of the Secretary of the Interior, sole responsibility for the determination of applicable federal discharge standards. The civil penalties which H.R. 983 would establish are the most stringent of those provided in any of the bills included in this report.

H.R. 1095 is similar to both H.R. 285 and H.R. 805, but is drafted in a converse form. Under H.R. 1095, the Secretary of the Interior, acting through the Fish and Wildlife Service, would be authorized to designate those areas into and onto which he determines certain waste materials cannot be safely discharged. Such areas then would be known as "marine sanctuaries." Persons discharging waste in "marine sanctuaries" would be subjected to heavy fines (Sec. 5B(e)). Initial designation of these areas would be delayed for one year after enactment of the bill pending completion of an investigation and study of potential "marine sanctuaries" by the Secretary of the Interior in cooperation with the Secretary of the Army acting through the Chief of Engineers.

Section 5B(d) of H.R. 1095 would provide that once such areas were designated as "marine sanctuaries",

"... all licenses, permits, or authorizations which have been issued by any officer or employee of the United States under authority of any other provision of law shall be terminated and of no effect to the extent they authorize any activity prohibited by subsection (e) of this section. Thereafter no license, permit, or authority shall be issued by any officer or employee of the United States which would authorize any activity prohibited by subsection (e) of this section."

Section 5C(a) of H.R. 1095 would require the Secretary of the Interior, within one hundred and eighty days after the designation of

¹ H.R. 285, subsection (h) ; H.R. 983, subsection (h) ; H.R. 1095, section 50(b).

areas as "marine sanctuaries"; to establish standards for the discharge of waste materials² in all other areas. The standard contained in this section is again a federal "no damage" standard.³ The standard also includes requirements for the treatment of wastes and like H.R. 805 would require persons before discharging wastes to "present sufficient evidence that discharging materials in the location in which they are to be deposited will not endanger the natural environment and ecology" of the navigable and coastal waters of the United States and international waters. Subject to certain exceptions which would allow the States to establish more stringent standards, these standards would be binding on the States and state agencies as well as the Federal Government and all federal agencies. Section 5C(b) would allow the Secretary of the Interior to appoint officers to enter and inspect property, plants and facilities in order to determine whether there has been compliance with this section.

Section 5C(f), of H.R. 1095 would provide that:

"(f) Upon the issuance of standards under subsection (a) of this section applicable to any area, all licenses, permits, or authorizations which have been issued by any officer or employee of the United States under authority of any other provision of law with respect to discharges in an area shall be terminated and of no effect to the extent they authorize any activity prohibited by subsection (g) of this section."⁴

Unlike H.R. 285, H.R. 805, and H.R. 983, H.R. 1095 contains specific requirements for disposal of military materials including chemical, biological, and radiological warfare agents.

It is not entirely clear from the language of the bills, what impact H.R. 285, H.R. 805, H.R. 983 and H.R. 1095 would have on the Commission's responsibilities for licensing non-federal hydroelectric projects under Part I of the Federal Power Act (16 U.S.C. 792-823), and for issuing certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities under Section 7 of the Natural Gas Act (15 U.S.C. 717f). It could well be argued that the definitions of wastes used in the bills are not intended to encompass discharges from non-federal hydroelectric power plants or from natural gas pipeline facilities. H.R. 805 could have a similarly limited impact by virtue of its narrower definition of "ocean, coastal, and other waters".

The Commission opposes enactment of H.R. 805 in its present form because subsection (i) would terminate all FPC licenses, permits and certificates on the date H.R. 805 becomes effective. We believe that enactment of H.R. 905 would seriously impair the attainment of an adequate supply of electric energy throughout the United States. The proposed bill is contrary to the national policy of comprehensive development of the Nation's water resources articulated in Part I of the Federal Power Act. (*First Iowa Hydro-Electric Cooperative v. F.P.C.* 328 U.S. 152, 180-181 (1946).

² In describing the wastes affected by the bill, H.R. 1095, unlike H.R. 285, H.R. 805 and H.R. 983, refers specifically to heated effluents and to solid, liquid or gas wastes (§§ 5B(e), 5C(a)).

³ "Such standards shall be for the purpose of insuring that no damage to, or loss of, any marine life or wildlife or other resources necessary for the ecological balance of the area or pollution of the navigable waters of the United States will result from any such activity . . ." § 5C(a).

⁴ Subsection (g) would subject persons discharging wastes in violation of established standards to heavy fines.

While the Commission supports their basic intent, we question whether the provisions in H.R. 285, H.R. 983 and H.R. 1095 represent the best or most orderly means of achieving the general objectives of these bills. We believe that the comprehensive approach embodied in H.R. 4723, the Administration's proposed "Marine Protection Act of 1971" offers a significantly better solution to the growing problem of unregulated ocean dumping. Under that proposal the Administrator of the Environmental Protection Agency would be authorized to issue permits for the dumping in the oceans, coastal and other waters of materials which he determines "will not unreasonably degrade or unreasonably endanger human health, welfare or amenities of the marine environment, ecological systems or economic potentialities". In reviewing and evaluating individual permit applications the Administrator would apply criteria which extend to both (1) the likely impact of the proposed dumping on human health and welfare and the marine environment and (2) alternative disposal locations, the probable impact of requiring the use of such alternative locations and the public interest considerations associated with issuing or denying permits. In establishing or revising such criteria the Administrator would have the benefit of the comments and suggestions of various Federal agencies, including those of the Federal Power Commission.

The Commission also questions the practicality of the absolute "no damage" standard contained in the bills. In practice, this standard would have the effect of prohibiting any discharge of waste material into navigable or coastal waters. The federal "no damage" standard and the more stringent state standards which could be imposed under H.R. 285, H.R. 805, H.R. 983 and H.R. 1095, could well, if pressed too far, impair or defeat the attainment of other national objectives, including the development of adequate utility services and the production of needed supplies of industrial goods. The Commission is cognizant of the importance of protecting marine and wildlife resources. However, the Commission believes the more flexible case-by-case approach utilized in H.R. 4723, the Administration bill, would be preferable.

The Commission has no comments to offer on the provisions of H.R. 1095 which relate to the disposal of military wastes.

The Office of Management and Budget advises there is no objection to the presentation of this report and, that enactment of H.R. 4723 would be in accord with the program of the President.

FEDERAL POWER COMMISSION,
JOHN N. NASSIKAS, *Chairman*.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
May 10, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of February 26, 1971, for reports on H.R. 4247 and H.R. 4723, bills "To regulate the dumping of material in the oceans, coastal, and other waters and for other purposes."

These identical bills embody an Administration proposal transmitted to the Congress by the Administrator of the Environmental Protection Agency on February 10, 1971. They would prohibit, except as authorized by the Administrator of the Environmental Protection Agency, the transportation of material from the United States for the purpose of dumping it into the "oceans, coastal, and other waters," and the dumping of material into the "oceans, coastal, and other waters" of the United States. Nevertheless, the proposal would authorize the Administrator of the Environmental Protection Agency to issue permits for such purposes where, in his judgment, such transportation or dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. It would require the Administrator to develop criteria for reviewing and evaluating the issuance of such permits, after consultation with the Secretaries of Commerce, Interior, State, Defense, Agriculture, Health, Education, and Welfare, and Transportation, the Atomic Energy Commission, and other appropriate Federal, State, and local officials.

In addition, the proposal would authorize the Administrator to designate recommended sites for the dumping of specified materials. Provision would be made for penalties for violation of the Act. The proposal would also direct the Secretary of State, in consultation with the Administrator of the Environmental Protection Agency, to seek effective international action and cooperation to ensure protection of the marine environment and would authorize him to formulate, present, or support specific proposals in the United Nations and other competent international organizations for such purposes.

The need for this new program is made clear in the President's message of February 8, 1971, "Program for a Better Environment". We urge its enactment.

We are advised by the Office of Management and Budget that enactment of this proposal would be in accord with the Administration's program.

Sincerely,

(S) ELLIOT L. RICHARDSON,
Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 5, 1971.

HON. EDWARD A. GARMATZ,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: We respond to your request of February 26 for comment on H.R. 4247 and H.R. 4723, identical bills "To regulate the dumping of material in the oceans, coastal, and other waters and for other purposes", the "Marine Protection Act of 1971".

The Department of the Interior strongly recommends enactment of this Administration proposal to provide long sought regulation of waste disposal in ocean, coastal, and Great Lakes waters of the United States.

U.S. DEPARTMENT OF THE INTERIOR

H.R. 4247 and H.R. 4723 would vest in the Administrator of the Environmental Protection Agency authority to control ocean dumping of waste materials through issuance of permits and enforcement of a prohibition against the unauthorized transport or dumping of such material. In determining whether or not to approve a permit application, the Administrator would be required to consider (1) the impact of dumping on the marine environment and human welfare and (2) other possible locations and methods of disposal, including land-based alternatives, but in no event would a permit be issued for a dumping in violation of applicable water quality standards. Section 5 provides authority to designate recommended sites for the dumping of specified materials, and would allow the Administrator to deny, alter or revoke a permit for the disposal of any material that could threaten human health or the marine environment.

Jurisdiction would extend to all persons, including Federal, State, and foreign governmental organizations, who seek to dispose in territorial waters of the United States or the adjacent contiguous zone, to the extent that such disposal in the contiguous zone may affect the territorial sea or territory of the United States. Section 6 provides a civil penalty of not more than \$50,000 for each violation of the prohibition against unauthorized transport or disposal and criminal sanctions for knowing and willful violations. Surveillance would be conducted by the Coast Guard, and legal action taken by the Attorney General upon request of the Administrator. A thorough analysis of its draft bill was transmitted to the Congress on February 10 by the Environmental Protection Agency.

As your Committee is aware this Department has frequently expressed its opposition to the use of ocean waters for waste disposal. Implicit in our opposition to *all* ocean dumping, however, has been the recognition that feasible alternatives are not always available. Our concern for the environmental effects of uncontrolled dumping led to recent studies of the New York Bight and participation in the review of ocean dumping generally which preceded the issuance on October 7, 1970 of "Ocean Dumping—A National Policy", a report prepared by the Council on Environmental Quality.

We participated, too, in the preparation and review of legislation to implement the Council's recommendations. The bills now pending before your Committee, H.R. 4247 and H.R. 4723, are the end result of close cooperation among those several Federal agencies with responsibility for the protection, conservation and management of our Nation's natural resources. The Department of the Interior will provide whatever assistance it can to the Administrator of the Environmental Protection Agency under section 5(a) of the Marine Protection Act of 1971.

President Nixon noted in his environmental message of February 8 that ocean disposal has a number of harmful effects, including destruction of marine life, decreased abundance of fish and other economic resources, modification of marine ecosystems, and impairment of aesthetic values. We urge prompt enactment of H.R. 4247 or H.R. 4723, as the President suggested, "to assure that our oceans do not suffer the fate of so many of our inland waters, and to provide the authority needed to protect our coastal waters, beaches, and estuaries".

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The Office of Management and Budget has advised that this report is in accord with the program of the President.

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, existing law in which no change is proposed is shown in roman) :

SECTION 20 OF THE ACT OF MARCH 3, 1899

SEC. 20. That under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section nineteen, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: *Provided*, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it; *And provided further*, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States.

Such sum of money as may be necessary to execute this section and the preceding section of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid out on the requisition of the Secretary of War.

That all laws or parts of laws inconsistent with the foregoing sections nine to twenty, inclusive, of this Act are hereby repealed: *Provided*, That no action begun or right of action accrued prior to the passage of this Act shall be affected by this repeal. [: *Provided further*, That nothing contained in the said foregoing sections shall be construed as repealing, modifying, or in any manner affecting the provisions of an Act of Congress approved June twenty-ninth, eighteen hundred and eighty-eight, entitled "An Act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York

City, by dumping or otherwise, and to punish and prevent such offenses," as amended by section three of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four].

ACT OF JUNE 29, 1888

[SEC. 1. That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the waters of any harbor subject to this Act, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor.

[SEC. 2. That any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of any harbor subject to this Act, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor, shall be deemed guilty of a violation of this act, and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section one of this act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted.

[SEC. 3. That in all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, the owner or master, or person acting in such capacity on board of such scows, or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one thousand nor less than five hundred dollars, and in addition thereto the master of any tug or towboat so offending shall have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted.

[And any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and

master, or person acting in the capacity of master, or any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor, as provided in section one of the said Act of June twenty-ninth, eighteen hundred and eighty-eight; and the owner and master, or person acting in the capacity of master, or any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of this Act or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, no improper handling or moving of scows or boats of any kind whatsoever shall operate to release the owners and master and employees of scows and towboats from the penalties hereinbefore mentioned.

【Every scow or boat engaged in the transportation of dredgings, earth, sand, mud, cellar dirt, garbage, or other offensive material of any description shall have its name or number and owner's name painted in letters and numbers at least fourteen inches long on both sides of the scow or boat; these names and numbers shall be kept distinctly legible at all times, and no scow or boat not so marked shall be used to transport or dump any such material. Each such scow or boat shall be equipped at all times with a life line or rope extending at least the length of and three feet above the deck thereof, such rope to be attached to the coaming thereof, also with a life-preserver and a life buoy for each person on board thereof, also with anchor to weigh not less than two hundred and seventy-five pounds, and at least one hundred feet of cable attached thereto; a list of the names of all men employed on any such scow or boat shall be kept by the owner or master thereof and the said list shall be open to the inspection of all parties. Failure to comply with any of the foregoing provisions shall render the owner of such scow or boat liable upon conviction thereof to a penalty of not more than five hundred dollars.

【Each supervisor of a harbor is authorized and directed to appoint inspectors and deputy inspectors, and, for the purposes of enforcing this Act and the Act of August 18, 1894, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes" (28 Stat. 338), and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority:

【First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this section and by the Act of June twenty-ninth, eighteen hundred and eighty-eight, aforesaid, or who may violate any of the provisions of the same: *Provided*, That no person shall be

arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: *And provided, further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

【Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit, as required in this section of this Act, or otherwise violating any of the provisions of this section of this Act, and to seize and hold said boats until they are discharged by action of the commissioner, judge, or court of the United States before whom the offending persons are brought.

【Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds.

【Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of this Act and of the Act aforesaid.

【Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into the tidal waters of the harbor in violation of section one of the aforesaid Act of June twenty-ninth, eighteen hundred and eighty-eight.

【Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward, or makes any offer of the same to any inspector, deputy inspector, or other employee of the office of any supervisor of a harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of this section or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, shall, on conviction thereof, be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned not less than six months nor more than one year.

【Every permit issued in accordance with the provisions of this section of this Act, which may not be taken up by an inspector or deputy inspector, shall be returned within four days after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and, if so, the time and place of dumping. Any person violating the provisions of this section shall be liable to a fine of not more than five hundred dollars nor less than one hundred dollars.】

[SEC. 4. That all mud, dirt, sands, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in any harbor subject to this Act, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of that harbor to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in the third section of this act prescribed, and not otherwise. Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined, and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense against this act, and shall be punished by a fine equal to the sum of five dollars for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section. Any boat or vessel used or employed in violating any provision of this act, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against, summarily by way of libel in any district court of the United States, having jurisdiction thereof.

[SEC. 5. That an officer of the Corps of Engineers shall for each harbor subject to this Act, be designated by the Secretary of the Army as supervisor of the harbor, to act under the direction of the Chief of Engineers in enforcing the provisions of this Act, and in detecting offenders against the same. Each such officer shall have personal charge and supervision under the Chief of Engineers, and shall direct the patrol boats and other means to detect and bring to punishment offenders against the provisions of this Act.

[SEC. 6. That the following harbors shall be subject to this Act:

- [(1)** The harbor of New York.
- [(2)** The harbor of Hampton Roads.
- [(3)** The harbor of Baltimore.

[SEC. 7. That for the purposes of this Act—

[(1) The term "harbor of New York" means the tidal waters of the harbor of New York, its adjacent and tributary waters, and those of Long Island Sound.

[(2) The term "harbor of Hampton Roads" means the tidal waters of the harbors of Norfolk, Portsmouth, Newport News, Hampton Roads, and their adjacent and tributary waters, so much of the Chesapeake Bay and its tributaries as lies within the State of Virginia, and so much of the Atlantic Ocean and its tributaries as lies within the jurisdiction of the United States within or to the east of the State of Virginia.

[(3) The term "harbor of Baltimore" means the tidal waters of the harbor of Baltimore and its adjacent and tributary waters, and so much of Chesapeake Bay and its tributaries as lie within the State of Maryland.]

SECTION 2 OF THE ACT OF AUGUST 5, 1886

[Sec. 2. That in places where harbor-lines have not been established, and where deposits of debris of mines or stamp workers can be made without injury to navigation, within lines to be established by the Secretary of War, said officer may, and is hereby authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him.**]**

